







**THE INCOME TAX LAW OF 1913  
EXPLAINED**



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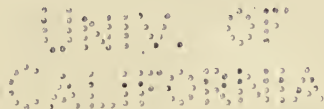
# THE INCOME TAX LAW OF 1913 EXPLAINED

WITH THE REGULATIONS OF THE TREASURY  
DEPARTMENT TO OCTOBER 31, 1913

BY

GEORGE F. TUCKER

JOINT AUTHOR OF "THE FEDERAL INCOME TAX OF  
1894 EXPLAINED"



BOSTON  
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## PREFACE

THE design is to present the provisions of the present Federal law imposing a tax upon incomes with explanatory observations and with the citation of rulings and decisions upon former acts. Some of these rulings and decisions may not now be followed. It is to be noted, however, that most of the provisions of the present law imposing a tax upon the incomes of corporations are identical with those of the act of Aug. 5, 1909, which imposed an excise tax. Hence many of the orders issued and the rulings and decisions made upon that act and cited in this volume will probably be followed and adopted.

The author desires particularly to acknowledge the courtesy of the Wall Street Journal in permitting him to quote from the articles appearing in the June, July, and September issues of that Journal, from the pen of Mr. B. S. Orcutt, and to suggest to taxpayers the perusal of those articles as a remarkably clear and practical presentation of the questions and problems involved.

G. F. T.

Boston, Dec. 1, 1913.



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# THE INCOME TAX LAW OF 1913, EXPLAINED

## INTRODUCTORY

Income taxes belong to the Bureau of Internal Revenue.

Revenue statutes, being neither remedial nor founded upon any permanent public policy, are to be construed in favor of the taxpayer, and most strongly against the government. *Eidman v. Martinez*, 184 U. S. 578, 583; *Rice v. United States*, 53 Fed. Rep. 910. Statutes relating to frauds upon the revenue, though imposing penalties, are not construed strictly in the defendant's favor, like penal laws, but in such manner as to carry out the intent of the legislature. *United States v. Stowell*, 133 U. S. 1, 12.

The first Federal income tax was that contained in the Revenue Law of August 6, 1861, c. 45 (12 St. at L. 309). This act was never put in force and was repealed and reenacted by the act of July 1, 1862, c. 119 (12 St. at L. 473), which was amended by the act of March 3, 1863, c. 74 (12 St. at L. 713). The

next act was that of June 30, 1864, c. 173, §§ 116-123 (13 St. at L. 223, 281). Certain sections of this act were amended by the St. of March 3, 1865, c. 78 (13 St. at L. 479). It was further amended by the act of July 13, 1866, c. 184 (14 St. at L. 137). The next act was that of March 2, 1867, c. 169 (14 St. at L. 477). The act of July 14, 1870, c. 255 (16 St. at L. 257) limited the tax to the years 1870 and 1871, and no longer. The next act was that of August 27, 1894, c. 349 (28 St. at L. 509, 553), which was declared unconstitutional in *Pollock v. Farmers' Loan Co.*, 157 U. S. 429; 158 U. S. 601.

Besides the decisions of the courts and the rulings of the Internal Revenue officers, the books which have been chiefly consulted in the preparation of this manual are —

Seligman, *The Income Tax* (1911). This is an exhaustive treatise, giving the history of income tax laws throughout the world and ably dealing with the constitutional problems which have arisen in the United States, as well as with questions of administration, etc.

Kennan, *Income Taxation* (1910). This gives a valuable summary of method and results in various countries and contains much practical information.

Bump, *Internal Revenue Statutes*, now in



force with Notes referring to all Decisions of the Courts and Departmental Rulings, Circulars and Instructions, reported to October 1, 1870.

Foster & Abbot, A Treatise on the Federal Income Tax under the Act of 1894 (1895). This work as stated in the preface "is to furnish a practical treatise for the benefit of lawyers, government officials, and laymen, on the interpretation of the new law imposing an income tax."

The Internal Revenue Record and Customs Journal.

Boutwell, A Manual of the Direct and Excise Tax System of the United States (1863).

Boutwell, A Manual of the Direct and Excise Tax System of the United States (1864).

The United States Revenue Journal.

United States Treasury Decisions.

Articles in the Wall Street Journal in issues of June, July, and September, 1913 — seventeen in all, their object being to point out the defects of the bill before Congress.

Speer, Federal Income Tax Law, with an Analysis of the Act and Explanatory Notes (1913).

Those of the above volumes hereinafter referred to will be cited in the following abbreviated forms:

Seligman.

Bump.

Foster & Abbot.

Int. Rev. Rec.

Bout. (1863).

Bout. (1864).

U. S. Rev. Journ.

Treas. Decis.

Wall St. Journ.

Speer.

The history of income taxes in England and other European countries is ably treated in Seligman, 57-355. For State income taxes, see Ibid., 388 *et seq.*



The following is the Amendment to the Constitution of the United States, by virtue of which the present income tax law was passed:

## ARTICLE XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The present law, approved October 3, 1913, is Section II of an act "To reduce tariff duties and to provide revenue for the Government, and for other purposes," and is, with notes appended, as follows:

### THE NORMAL AND ADDITIONAL INCOME TAX

A. Subdivision I. That there shall be levied, assessed, collected, and paid annually upon the entire net income arising or accruing from all sources in the preceding

calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of one per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Subdivision II. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of one per cent. per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$50,000, and two per cent. per annum upon the amount by which the total net income exceeds \$50,000 and

does not exceed \$75,000, three per cent. per annum upon the amount by which the total net income exceeds \$75,000 and does not exceed \$100,000, four per cent. per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$250,000, five per cent. per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$500,000, and six per cent. per annum upon the amount by which the total net income exceeds \$500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable, and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise,

for the preceding calendar year under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint stock companies or associations, however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and

profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

Subdivision I is quite similar in its provisions to previous acts. The provisions of Subdivision II relative to an additional income tax are new.

The writer in the Wall St. Journ. in Art. XV, in speaking of the changes made by the Senate caucus in the original bill, says that the object of the change levying a tax of 1 per centum on all net income "except as hereinafter pro-



vided," instead of income "over and above" a certain amount, manifestly is to meet the Journal's criticism that, although the bill levied no tax on incomes under the certain amount, "it provided for the collection of a tax on incomes no matter how small, if such incomes were derived from interest on bonds." Further, that such a proceeding was not only unjust to those receiving incomes below the taxable limit, but "was probably unconstitutional inasmuch as it required a corporation to withhold or pay, as the case might be, from or on behalf of its creditors, moneys to which the creditors were entitled or which the corporation was not obligated to pay except under threat of even larger penalty." It was also pointed out "that no provision was made for the disposal of the moneys withheld on incomes of less than" a certain amount. This criticism has been met by insertion of the words, "And paid to the Government" at the end of the clause authorizing the deduction. See p. 87.

"The result of these two changes is that a tax is levied on all incomes unless the recipient can prove that he is exempt, which, in the case of a person who derives even \$10 a year from bond interest, seems impossible." See Arts. II, XI, XII, XVI.

The writer in the Wall St. Journ. further states in Art. XVII that he pointed out in a former article that the provisions as to surtax and deduction for dividends received from corporations which had paid the normal tax of 1 per centum on net income before the distribution of the dividend would leave free of surtax the \$600,000 of dividends received annually by the estate of A. B. (used as an example), and also made it possible for A. B. to incorporate his other investments and thereby avoid the payment of the surtax on all his income by paying it to himself in the form of dividends from A. B., Inc., such dividends not being taxable in the hands of the individual.

He further states that an effort was made to remedy the defect by inserting (see B) the words "for the purpose of the normal tax," so that the bill thus read: "That in computing net income for the purpose of the normal tax there shall be allowed as deductions," etc. The writer then refers to the clause added to Subdivision II, which begins with the words, "For the purpose of this additional tax, the taxable income, etc.," and says that this "narrows the attempt to collect a tax on undistributed earnings to companies formed or fraudulently availed of for the purpose of pre-

venting the imposition of such tax, but it in no way strengthens the act as to the collection of a surtax on incomes derived from the enormous total of dividends from legitimate corporations not used for fraudulent purposes. The anomalous situation is now presented of a measure still leaving open the loophole for the evasion of taxation contained in the original draft and at the same time throwing on the Secretary of the Treasury the responsibility and authority to decide whether or not a corporation is fraudulent and whether it permits its gains and profits to accumulate as surplus beyond the reasonable needs of business.

“It would be difficult to conceive a more drastic power or a more weighty responsibility than for one man to be charged with the duty of deciding which of the thousands of corporations in this country are fraudulent or used for fraudulent purposes, and what are their legitimate business requirements in the way of surplus.”

Only the individual is subject to the additional tax, and, when he pays the normal tax (it not being paid for him at the source) the additional tax will be assessed against him and collected at the same time and in the same manner. Both taxes may be easily figured



out. A convenient illustration is given in Speer, 19.

The instructions under the old acts were that residents should make return in the district where they resided at the time of making return, residence being that during the year for which income was derived; and if any person resided abroad, his return was to be made in the district where he last resided. 7 Int. Rev. Rec. 59. See Bump, 284.

The place where a person voted, or was entitled to vote, was formerly held to be his residence, and, if not a voter, the place where the tax on personal property was paid. Bout. (1863) 273.

The wife of an alien was held to be an alien, though a citizen before marriage. If she resided abroad, the profits and income from stock, etc., held by a trustee here were not to be returned; if she resided here, she was liable to the tax imposed upon every citizen residing here. 6 Int. Rev. Rec. 66. See Bump, 284.

It was held that an alien residing here was entitled to the same exemption as a native-born or naturalized citizen. 6 Int. Rev. Rec. 18.

It was held that income from personalty held by a trustee for persons not citizens and

not residing here was not taxable. 1 Int. Rev. Rec. 171.

Income from an inherited estate in a foreign country of one who had become a citizen there in order to receive the estate was held to be taxable. 3 Int. Rev. Rec. 140.

Where the gains of an association were its sole property, and not divisible among its members, the association was held to be a person within the meaning of the law, and required to make a return. 10 Int. Rev. Rec. 39.

Where a person died before the end of the income year, the gains, income, etc., during that portion of the year he was in life were held subject to taxation as income. *Mandell v. Pierce*, 3 Cliff. 134. See 14 Int. Rev. Rec. 91; Bump. 284.

Cases relative to residing and doing business in the United States may be found in *Foster & Abbot*, 98-101. English decisions as to residence are given in *Dowell's Income Tax Laws* (7th ed.), 448-453.

## WHAT THE NET INCOME INCLUDES

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable

person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided*, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income.

The design of this paragraph is undoubtedly to cover about all the sources of income referred to in previous acts, yet the differences in phraseology are marked. The more important may be mentioned. In previous acts are the words "all income derived from interest upon notes, bonds, and other securities," which are followed in the act of 1894 by the words "except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation."

Other provisions in the old acts appear to be broader as "other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premiums on bonds, notes, or coupons; the amount of sales" of enumerated produce being the growth or produce of the estate of such person, "less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by gift or inheritance."

The present act says "including the income from but not the value of property acquired by gift, bequest, devise, or descent."

The general clause as to "gains or profits and income derived from any source whatever" appears in preceding acts. After the word "whatever" in the act of 1867 is the following "except the rental value of any homestead used or occupied by any person or by his family in his own right or in the right of his wife; and the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same, if divided, whether divided or otherwise, except the amount of income received from institutions or corporations whose officers, as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the officer authorized to receive the same; and except that portion of the salary or pay received." And in the act of 1894, "except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, including Senators, Representatives, and Delegates in Congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold, the tax and pays the same to the officer authorized to receive it."



The writer in the Wall St. Journ. in Art. XV says, "In the matter of life insurance, the Senate Bill has accepted the amendment suggested in the Wall Street Journal exempting from tax moneys received by the insurer upon surrender of the contract, as well as upon its maturity." See Art. IX.

The income from a "business" is different from that from a "profession, trade, or employment." The income from a business "is the net result of many combined influences: the use of the capital invested; the personal labor and services of the members of the firm; the skill and ability with which they lay in, or from time to time renew, their stock; the carefulness and good judgment with which they sell and give credit; and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the country. To express it in a more summary and comprehensive form, it is the creation of capital, industry, and skill." *Wilcox v. County Com'rs*, 103 Mass. 544, 546. "The words in this statute [1894] must be construed in connection with those to which it is joined, namely, gains and profits; and it is evidently the intention, as a general rule, to tax only the profits of the taxpayer, not his

whole revenue." Foster & Abbot, 116. Under the old law it was held in 1872, in *Gray v. Darlington*, 15 Wall. 63, 66, that "the mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital."

Under the act of 1870, which imposed a tax on gains, profits, and income for 1871, and no longer, the amount of a promissory note taken in 1871, on the sale in that year of a patent right, but not due until some time in 1872, and paid in that year, was not taxable as income for 1871. *United States v. Schillinger*, 14 Blatch. 71.

The tax under the old law was assessed upon the income of individuals, and not upon firms. *Bout.* (1863) 275. See 4 *Int. Rev. Rec.* 46.

*Salaries, wages, or compensation for personal service of whatever kind and in whatever form paid.*

It was held under the old acts —

That marriage fees of and gifts to a pastor were returnable when the gifts were in the nature of compensation for services, whether

in accordance with an understanding at the settlement or an annual custom. 7 Int. Rev. Rec. 59. But see above as to the income from gifts.

That where the earnings of a minor were under the control of the father they were to be included in his income; if entirely free from his control, the assessment was to be separate. 1 Int. Rev. Rec. 181. And if the taxpayer had a minor child in the service of the government receiving a salary, the parent should include in his return so much of the salary as was not subject to a salary tax. 7 Int. Rev. Rec. 59. A ruling on the emancipation of a child is given in 11 Int. Rev. Rec. 122.

That salaries, except where specially provided for by statute, were income from business. 3 Int. Rev. Rec. 188. Formerly the salary of a judge of a State court was held not liable. *Collector v. Day*, 11 Wall. 113; 3 Cliff. 376. So formerly the revenues of a State, and also the revenues of municipal corporations created for the purpose of exercising within a limited sphere the governmental powers of the State, so far as the latter revenues were municipal in their nature, were exempt from such taxation. *United States v. Railroad Co.*, 17 Wall. 322. As to soldiers honorably discharged, see 11 Int. Rev. Rec. 123.



That gifts of money, when not for services or other valuable consideration, were not liable, and amounts received on life insurance policies and tort damages were exempt. 7 Int. Rev. Rec. 59. See 3 Int. Rev. Rec. 118; 41 U. S. Rev. Journ. 77. But see above as to the income from gifts.

That extra pay granted to officers by special acts was liable. 2 Int. Rev. Rec. 108. For cases where certain salaries of government employees were to be included with other taxable income, and, in the event of the salary exceeding a certain amount, the amount of salary from which the tax had been deducted was to be deducted from the gross income, see 7 Int. Rev. Rec. 59.

*Professions, vocations, businesses, trade, commerce.*

Betting is a vocation. *Partridge v. Mallandaine*, L. R. 18 Q. B. D. 276.

The tax on brokers, under the act of 1864, is stated in *United States v. Cutting*, 3 Wall. 441; *United States v. Fisk*, Ibid. 445. As to tax on deposits in savings banks under the old law, see *Bank for Savings v. Collector*, 3 Wall. 495.

It was held under the old acts —

That the profits of a manufacturer from his

business were not exempt because of his having paid an excise tax upon his manufactures. Bout. (1863), 275.

That a merchant's return should cover the business of the income year, excluding previous years, and that uncollected accounts must be estimated. Bout. (1863), 273.

That lawyers and physicians might return either the actual fees of the income year no matter when accrued, or the amounts due to the business of that year. 7 Int. Rev. Rec. 59.

That if the manufacturer or dealer had estimated his annual profits by taking inventories of stock, he might take the cost value unless he had taken the market value in making previous returns. 7 Int. Rev. Rec. 59.

That when a taxpayer had adopted one method of estimating, he could not subsequently adopt another. 7 Int. Rev. Rec. 59.

That there was no distinction between income from business and fixed investments. 7 Int. Rev. Rec. 59.

*Sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property.*

In *Merchants' Ins. Co. v. McCartney*, 12 Int. Rev. Rec. 122, 1 Lowell, 447, it was held that surplus earnings laid aside by a bank

before the first income tax law, and profits of sales of real estate bought before that time, were not liable to the income tax when divided afterward, and that under 13 St. at Large, 281, 282, an insurance company holding shares in a bank was not liable to a tax upon a dividend declared by the bank, and on which the bank had paid full income tax.

It was held under the old Acts —

That if an inventor sold his invention for a gross sum, he should return the whole amount, less expenses of perfecting the invention and procuring a patent; if he sold only a portion of his right during the year he might deduct a proportionate amount of the expense. 7 Int. Rev. Rec. 59.

That where a corporation distributed its assets after liquidation among its stockholders, the difference between the price paid for the shares and the sum so received was taxable as profits. 2 Int. Rev. Rec. 138. As to undistributed earnings made before September 1, 1862, see Bout. (1863), 275; 12 Int. Rev. Rec. 157.

That if a part of a piece of real estate purchased within the required time was sold, the excess of the sum received over the sum paid for the same portion should be returned. 5 Int. Rev. Rec. 138. And the fact that the real

estate had been increased in value by the erection of buildings, either within the prescribed time, or within some period previous, did not render any part of the receipts of sale taxable. 1 Int. Rev. Rec. 196.

That profits and losses within 1867 on sales of real estate purchased since December 31, 1864, should be returned. 7 Int. Rev. Rec. 60. As to points in case of underlying coal, see 7 Int. Rev. Rec. 60; 5 Int. Rev. Rec. 154. It was held that the profit on the sale of mined coal by the miner was the difference between the amount received and the expense of production (excluding all deductions for the personal service of the miner and family) plus the amount paid for each ton to the owner or lessor of the mine; and the profit of the owner or lessor of the mine thus receiving pay from the lessee or miner was the difference between the amount received for each ton and the estimated amount paid for each originally. 7 Int. Rev. Rec. 60.

That the profit realized on a sale of standing or felled timber was returnable, irrespective of the time when the land was purchased; that timber was converted into personalty by severance from the land on which it grew, and profits from the sale thereof were as liable to the tax as those from the sale of other prod-

ucts of the soil, or from mines, and that a farmer who kept woodland to cut and sell firewood, or a proprietor who sold to others the privilege of cutting, etc., the timber, should be required to estimate the receipts as a part of his income. Bout. (1863), 301; 1 Int. Rev. Rec. 171.

That when timber was sold standing the taxable profits were arrived at by estimating the value of the land after the timber was removed and adding the net amount for the timber, and from this sum deducting the estimated value of the land at the beginning of the income year. 7 Int. Rev. Rec. 58. As to the expense of cutting the timber and carrying it to market, see 41 U. S. Rev. Journ. 98.

That profits on the sales of personal property should be assessed irrespective of the time when purchased, and that the rule relating to realty did not apply to personalty. 41 U. S. Rev. Journ. 98.

That leases were personal property. 7 Int. Rev. Rec. 59; 2 Id. 44.

That a mining claim arising from the location of a mine on the public mineral lands was personal property, and the difference between the actual cost and the price received from the claim was the profits. 4 Int. Rev. Rec. 124.

The present law is intended to cover sales



and dealings in real estate, and it is probable that, if a person sells to-day at a profit real estate which he purchased five years ago, the money would be free from tax.

*Interest, Rent, Dividends, Securities.*

It was held in *Barnes v. Railroads*, 17 Wall. 294, that interest or dividends which accrued before January 1, 1870, were taxable, though payable or declared on or after the date named.

Interest on railroad bonds earned in 1871 but payable by the coupons in 1872 was held not subject to the tax authorized by the act of 1870 to be collected in 1871. *United States v. Indianapolis Railroad Co.*, 113 U. S. 711.

It was held in *Stockdale v. Insurance Companies*, 20 Wall. 323, that whether the tax on dividends from the earnings of corporations for 1869 be viewed as a tax on the shareholder or on the corporation, it was intended to tax the earnings for that year by the section which limited the duration of the income tax.

Section 117 of the act of 1864, which required stockholders in certain companies to return as income all gains and profits to which entitled, whether "divided or otherwise," was held to embrace not only dividends declared, but profits not divided and invested partly in real estate, machinery, and raw material, and

partly applied to the payment of debts incurred in previous years. *Collector v. Hubbard*, 12 Wall. 1; 35 Conn. 563.

It was held in *United States v. Central Nat. Bank*, 24 Fed. Rep. 577, that when taxes imposed by a State law are imposed upon the stockholders of a national bank, and not upon the corporation, the failure of the bank to return and pay a tax upon such part of its dividends declared within the year as was represented by the amount paid for such state tax, would not entitle it to exemption to that extent from the tax under the act of 1866, and the bank having declared a dividend as of earnings for the current year, and paid it as such to the stockholders, proof, to avoid the tax, that no earnings had been made because of the defalcation of the cashier, was inadmissible.

The act of Congress of July 14, 1870, relating to the taxation of railroad bonds; was part of the general system of income taxation, and fixed a time when that system should expire; and, in taxing the interest on such bonds as part of the corporate earnings, it applied only to interest actually paid, not to that merely payable. *United States v. Louisville R. Co.*, 33 Fed. Rep. 829.

An insurance company, a stockholder in a



bank, received a dividend, three-tenths from profits accumulated before the first act for collecting internal revenue, and seven-tenths from profits acquired afterwards. The bank, more than five years before the case was tried, had paid the revenue tax on the seven-tenths and denied a liability to taxation for the three-tenths, and it had never been enforced. Held, that the three-tenths was capital, and not liable to assessment as income, under the act of June 30, 1864 and that the seventh-tenths having been once assessed to the bank, could not be again assessed to the insurance company. *Merchants' Ins. Co. v. McCartney*, 1 Lowell, 447; 12 Int. Rev. Rec. 122.

It was further held under the old Acts —

That where a railway company paid to alien non-resident holders of its bonds the entire interest due from time to time thereon, no claim having been made here against it for any penalty, it was liable to the United States for five per cent on the amount so paid, with interest thereon at the rate of six per cent per annum. *United States v. Erie Railway Co.*, 106 U. S. 327.

That interest accrued during the previous year on United States securities should be returned. 7 Int. Rev. Rec. 60.

That interest accrued during the income

year on notes, bonds, etc., if good and collectible at the end of the year, should be returned whether collected or not. 7 Int. Rev. Rec. 59. See 41 U. S. Rev. Journ. 97.

That where an absolute deed was taken instead of a mortgage, and an agreement given to reconvey upon the payment of a certain sum equal to the loan with interest, the transaction was equivalent to a mortgage, and the gain to the lender must be returned. 3 Int. Rev. Rec. 140.

That interest should be considered as income only when paid, unless collectible and remaining unpaid by consent of the creditor. Bout. (1863), 274.

That scrip dividends returnable as income should be returned at their market value. 7 Int. Rev. Rec. 60.

That dividends payable in the income year should be returned as income for that year, no matter when declared. Bout. (1863), 274.

That if a corporation took any of its earnings and added them to the working capital and then made a new division of stock, the stockholders were to pay a tax on the additional stock; and if, on the other hand, it divided to all its stockholders its net earnings during the year, and after so doing gave to each stockholder two certificates for one held before,

there was no liability for such additional certificate except upon the dividend, and that there was no tax on a nominal increase. 1 Int. Rev. Rec. 188.

That such portions of a stock dividend as were made up of earnings acquired before July 1, 1862, were not to be returned. 2 Int. Rev. Rec. 61. See 1 Int. Rev. Rec. 155.

That a person who would be entitled to a share in the profits of a company, etc., if divided, should return the same as income, whether divided or otherwise. 7 Int. Rev. Rec. 60. See *Collector v. Hubbard*, 12 Wall. 1. See also 41 Int. Rev. Rec. 98.

That profits of companies accruing in the income year were liable to be returned; but if there was a division and no surplus remained at the end of the income year, only the amount divided should be returned. 1 Int. Rev. Rec. 180.

That profits of a gas company carried to construction account should be returned as income by the stockholders; and undistributed earnings of a corporation made before September, 1862, should not be considered as income of the stockholders, nor should the corporation be required to make return as trustee. 3 Int. Rev. Rec. 164.

That depositors receiving interest from sav-

ings banks described in the proviso to § 110 of the act of 1864 were required to return the same. 11 Int. Rev. Rec. 73.

That the owner of a ship was to return as income the entire earnings received in 1862 from the completed voyage and was not to return as income for 1862 earnings received from a voyage completed in 1863. The tax on whalers was to be assessed on the total yield on the termination of the voyage. Bout. (1863), 303.

As to rents, it was held under the old law—

That the rental value of property occupied by the owner was neither to be included in his income nor deducted. 1 Int. Rev. Rec. 171. See Ibid. 130.

That a party renting his own house and paying rent elsewhere must return the rent received, and was to be allowed to deduct the amount of the rent paid. 4 Int. Rev. Rec. 46; 5 Int. Rev. Rec. 154. For a case where land was leased for years under a contract that the lessee should erect a building and the expense of erecting the building was held to be in the nature of rent, and returnable by the lessor, see 7 Int. Rev. Rec. 60.

That where one cultivated the land of another under a contract to pay for the use in produce, it was rent and should be returned,

and the expenses were to be deducted from the income of the lessee only. 7 Int. Rev. Rec. 60.

That under the act of 1894 rents were not taxable as income. 41 U. S. Rev. Journ. 109.

Points of practice as to the taxpayer entering the dividends upon his return, etc., are set forth in 10 Int. Rev. Rec. 9.

*Transaction of any lawful business carried on for gain or profit.*

It was held under the old Acts —

That a taxpayer was to return as income all profits from sale of stocks made within the year, though bought previously. *United States v. Smith*, 1 Sawy. 277; 12 Int. Rev. Rec. 135. As to the liability of stockholders to pay on dividends or other income paid to them by their corporations, see *Stockdale v. Ins. Cos.*, 20 Wall. 323; *Merchants' Ins. Co. v. McCartney*, 1 Lowell, 447; 12 Int. Rev. Rec. 122; *Magee v. Denton*, 5 Blatch. 130.

*Gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent.*

Promissory notes, book accounts, etc., due during the year are evidences of debt. Whether



or not they are "gains, profits, or income" for that year within the statute depends upon their value intrinsically, or their convertibility into money, property, or available assets. If they have only a nominal, and not a real, value of convertible quality, and a man has realized nothing from them, and therefore does not return them as a part of his income, because he fairly and honestly believes they are not real gains or profits, he cannot be convicted of an untrue return. *United States v. Frost*, 9 Int. Rev. Rec. 41.

It was held under the old acts —

That legatees were not required to return their legacies. *Bout.* (1863), 275.

That pensions from the government must be returned. *Bout.* 274; 4 Int. Rev. Rec. 45.

That incomes from coal mines were to be returned, and no deductions were to be made on account of diminished value, actual or supposed, of the coal vein or bed by mining. *Bout.* (1863), 274.

That the payment of a legacy, etc., tax on the bequest of an annuity did not relieve the annuitant from liability on his income. 7 Int. Rev. Rec. 60.

That where any portion of a legacy had been transferred by the executor to the legatee, so that the former had no control of the profits,

they must be returned by the legatee. 7 Int. Rev. Rec. 59.

That the tax should be withheld from all payments on account of prize money, irrespective of when the captures were made. 7 Int. Rev. Rec. 11.

*Proceeds of life insurance policies not to be included as income.*

Life insurance money from a policy taken out by another for the assured was held not subject to a legacy or income tax. 3 Int. Rev. Rec. 140. See 7 Int. Rev. Rec. 59. And so the present act provides. See above, page 15.

The following are rulings as to produce, live-stock, etc., under the old acts.

It was held —

That a farmer should return all the produce sold within the income year, and that there must be delivery, either actual or constructive, to constitute a sale. 7 Int. Rev. Rec. 59.

That produce raised during the income year, or previous years, remaining on hand unsold at the end of the income year, need not be returned. 11 Int. Rev. Rec. 113. And so of produce consumed in the immediate family. 7 Int. Rev. Rec. 58. See *United States v. Simons*, 1 Abb. U. S. 470.

That profits on sales of livestock were to



be estimated by deducting the purchase money from the gross receipts from the sale. 7 Int. Rev. Rec. 58.

That produce returned in 1863 at \$1,150, and sold in 1864 for \$2,000 was to be returned as income for 1864 at \$2,000. 41 U. S. Rev. Journ. 98.

### DEDUCTIONS — BUSINESS EXPENSES — INTEREST — TAXES — LOSSES, ETC. — EXCLUSIONS

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all National, State, county, school, and municipal taxes, paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by in-

insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business not to exceed, in the case of mines, five per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company, which is taxable upon its net income as hereinafter provided; eighth, the amount

of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of \$3,000, or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person. The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

That in computing net income under this section there shall be excluded the interest

upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.

In the act of 1894, § 28, the language, new in that act, was, "the necessary expenses actually incurred in carrying on any business, occupation or profession."

The provisions as to taxes are similar to these in former acts except that the words "school" and "not including those assessed against local benefits" appeared first in the act of 1894, § 28. Former acts contain the words "whether such person be owner, tenant, or mortgagor."

As to losses, "storms" and the clause "and

not compensated for by insurance or otherwise" appeared for the first time in the act of 1894, § 28.

As to worthless debts, the clause "and charged off during the year" appears for the first time in this act.

The clause "a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business," etc., is new.

Much of what follows beginning with "seventh" is new. However, in the last paragraph of § 28 of the act of 1894 it is provided that the amount received on dividends of corporations, etc., shall not be included if the tax has been paid on the net profits by the corporation, etc., as required by the act. By § 33 of the act of 1894, it was provided that paymasters, etc., should withhold at the source the tax upon the salaries of the United States officials.

The provision as to the obligations of a State appears to be new. It is provided in § 28 of the act of 1894 that in estimating gains, etc., there should be included income from interest on bonds, etc., "except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation."



By preceding acts and especially by that of 1894, § 33, elaborate provision was made for taxing salaries of persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, etc. The following words at the end of § 33 were new: "*Provided, That salaries due to State, County, or municipal officers shall be exempt from the income tax herein levied.*"

*The necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses.*

It was held under the old acts —

That a salaried officer of the government was entitled to the deduction for house rent. Bout. (1864), 153.

That the whole amount expended for fertilizers applied during the income year to a farmer's lands might be deducted, but no deduction was to be allowed for fertilizers produced on the farm; and the cost of seed for sowing, etc., might be deducted. 7 Int. Rev. Rec. 58.

That no deduction could be allowed for the subsistence of laborers employed on a farm so far as they lived on its produce. 3 Int. Rev. Rec. 140.



That an officer could not deduct the expense of servant hire or fuel, unless the latter was consumed in business, but that he might deduct house rent. 1 Int. Rev. Rec. 100.

That money paid for labor, except such as was employed in domestic matters or in producing articles consumed by the family, might be deducted. 7 Int. Rev. Rec. 58.

That there was no deduction for the cost of unproductive labor; but if house servants were employed a part of the time in productive labor, a proportionate part of the wages might be deducted. 7 Int. Rev. Rec. 58. And expenditures for labor in one calendar year were not deductible from the proceeds of the crop of a subsequent year. 4 Int. Rev. Rec. 12.

That the value of the services of one's minor children, whether paid for by him or not, was not deductible; but adult children working for him and receiving compensation were like other hired laborers. 7 Int. Rev. Rec. 58.

That the salary of one taking care of real estate was deductible from such income of the person paying the salary as was derived from the real estate. 3 Int. Rev. Rec. 102.

That if expenses claimed to be deductible were not specified, the assessor might disallow them if he doubted their legality. 1 Int. Rev. Rec. 100.,

That costs of suits, etc., arising from ordinary business were the same as other expenses thereof, and might be deducted from the gross profits. 7 Int. Rev. Rec. 59.

That medical expenses, store bills, etc., were not deductible, but those for repair of tools, etc., used in business were. 7 Int. Rev. Rec. 59. And physicians obliged to keep a horse were allowed to deduct so much of the expense as was referable to the business. 7 Int. Rev. Rec. 59.

That the amount paid for the good-will of a business was capital, and not deductible. 7 Int. Rev. Rec. 60.

That so much of the expense of railway season-tickets used in going from home to business and returning as was fairly chargeable to business expenses might be deducted. 1 Int. Rev. Rec. 172.

That necessary expenses of conveyance in travelling in the prosecution of business might be deducted. 7 Int. Rev. Rec. 60. So hotel bills incurred in the prosecution of business or in temporarily residing in hotels in the prosecution of business, were to be deducted. 11 Int. Rev. Rec. 122.

That insurance moneys paid as an expense of business, but not other insurance moneys, were deductible, and insurance paid by a

tenant was deductible from the tenant's income as rent paid. 7 Int. Rev. Rec. 59. See 5 Int. Rev. Rec. 123.

That the expense of sinking wells worthless when exhausted was a necessary expense of the business of producing oil for sale, and might be deducted from the income of one so engaged. But that those who sank wells to sell to others should not be allowed the deduction. 11 Int. Rev. Rec. 123.

That the subsistence of horses, etc., used in carrying on the farm might be deducted. Bout. (1863), 274. And the expenses of carrying on a farm might be deducted from the income of the year only when paid. 6 Int. Rev. Rec. 3.

That expenses on property, real or personal, from which no income was derived, were not deductible. 11 Int. Rev. Rec. 50.

That rent of a homestead actually paid might be deducted, but the rental value of the taxpayer's property was not deductible; but where the taxpayer rented a furnished house, that part of the rent paid for the use of the furniture was not deductible. 7 Int. Rev. Rec. 59. See 5 Int. Rev. Rec. 154; 4 Int. Rev. Rec. 46. In 41 U. S. Rev. Journ. 77, it is said that no deduction can be allowed for rent paid for a residence where persons live in rented houses.

That any one claiming a deduction for expense for room rent must satisfy the assessor that the room constituted his home and residence; and in this event he might deduct what he paid for rent, irrespective of rent of furniture or care of room; and when rent was deducted as an expense of business, it could not be deducted again as rent, and one hiring a house and subletting a portion could not deduct more than the excess of his payments over receipts. 7 Int. Rev. Rec. 59; Bout. (1863), 276.

That where a taxpayer paid a gross sum for room and board, and had no home elsewhere, he could deduct a fair allowance for rent of such room, and that the assessor should determine, from his best information, what proportion of the amount paid was payment for the room only; and that no deduction should be allowed for rent of furniture, care of rooms, or for fuel or lights used. 11 Int. Rev. Rec. 58.

That stockholders could not deduct assessments paid by them to the corporation to make good a deficiency in the capital stock of the reserve fund. 41 U. S. Rev. Journ. 77.

That capital invested in any stockholding company was not recognized as capital used in business, and there was no deduction for the loss of such capital. 4 Int. Rev. Rec. 46.

That penalties imposed for violation of the excise law were legitimate offsets to the profits of the business in connection with which they were incurred, but that they could not be allowed as deductions from income actually realized from other pursuits. 4 Int. Rev. Rec. 46.

*All interest paid within the year by a taxable person on indebtedness.*

It was held under the old acts —

That where a person could not be compelled to pay interest nominally falling due in the year, it could not be deducted, except that where interest was paid on an income-paying business, only such portion as was not in excess of the interest due to the taxpayer was to be offset against income. 7 Int. Rev. Rec. 59.

That interest on borrowed capital used in business might be deducted. Bout. (1863), 275.

That interest paid on money invested in business or real estate, from which no income was derived, was not deductible; but interest thus paid might be offset against interest due to the taxpayer. 11 Int. Rev. Rec. 50; 7 Id. 59.

That if a mortgage on a homestead was given to secure the payment of money invested in business from which income was derived, the interest paid was deductible; but where, how-



ever, the mortgage was given to secure the purchase price, or any part thereof, interest paid was not deductible, except where it might be offset against interest received or falling due; and if interest had been received by renting any portion of the mortgaged premises, a ratable deduction of interest paid should be allowed. 11 Int. Rev. Rec. 89.

That where a mortgage was given on a home-  
stead for the purchase price, or any part thereof,  
the interest paid was not deductible except  
where it might be offset against interest re-  
ceived or falling due; and if income was re-  
ceived from the rental of any portion of the  
mortgaged premises, a ratable deduction of  
interest paid should be allowed. 11 Int. Rev.  
Rec. 89, 97.

*All National, State, county, school, and muni-  
cipal taxes paid within the year, not including  
those assessed against local benefits.*

Mr. Speer in his Federal Income Tax Law,  
published in October, 1913, says at page 15,  
“The exclusion of the taxes assessed against  
local benefits is probably upon the ground that  
the local benefits increase the value of the  
property affected to an amount equal to the  
taxes assessed and paid for such benefits.  
While the law reads that all taxes of the nature



mentioned which are paid within the year are deductible, it will require a ruling of the Treasury Department to determine whether such payments will be limited to the taxes falling due within the year for which return is made, or whether the payment of accumulated taxes which were due in previous years will also be allowed as deductions."

It was held under the old acts —

That the assessment paid on a pew should be considered a contribution and not a tax. Bout. (1864), 153.

That local assessments for cleaning or repairing sewers were legitimate deductions from the income of the property upon which such assessments were laid. Bout. (1864), 151.

That taxes deducted from the income of a previous year could not be deducted again. 1 Int. Rev. Rec. 181.

That when the owner occupied the property, he was entitled to deduct the taxes paid thereon as if the same were rented. 1 Int. Rev. Rec. 155.

That State and municipal taxes paid upon a homestead, and ordinary repairs thereon, were deductible. 11 Int. Rev. Rec. 89.

That national, state, county, and municipal taxes actually paid were deductible from the income of the year in which payment was

made, even though paid on property from which no income was derived. 11 Int. Rev. Rec. 98. But that such taxes not actually paid until after the end of the income year should not be deducted from that year's income, even though they might have been then due. 7 Int. Rev. Rec. 60. As to legacy and succession taxes, see 7 Int. Rev. Rec. 59.

That assessments by municipal corporations for the laying out, etc., of streets, sewers, etc., might be deducted from income where they were laid upon all taxpayers within the corporation. 1 Int. Rev. Rec. 196; Bump, 292.

That assessments upon the property holders of a certain locality by the municipal authorities on account of special improvements in streets adjoining their premises, should be deducted from the income of persons so assessed. 5 Int. Rev. Rec. 115; Bump, 292.

That where by state laws stocks divided into shares were not taxable by cities and towns, but were taxed to the companies, and the tax collected by the State was credited to the towns where the stockholders resided, the stockholder could not deduct the tax from his income, since the deduction was made by the corporation before the dividend was declared. 1 Int. Rev. Rec. 181. See 10 Int. Rev. Rec. 9.

That the income withheld by corporations

from the dividends of the shareholder, as provided by the internal revenue laws, should be deducted, since the tax was in reality a tax upon the shareholder, and its payment by the corporation was merely a mode of collecting it. 10 Int. Rev. Rec. 9.

*Losses actually sustained during the year, incurred in trade, or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise.*

It was held under the old acts —

That losses in one kind of business might be deducted from the gains in another, or from the gross income of the year, and that assessors should not allow the deduction of amounts claimed to have been lost in business when in reality they should be regarded as investments or expenditures. 3 Int. Rev. Rec. 140; 7 Id. 59.

That no so-called loss incurred by a gift of property could be allowed as a deduction. 7 Int. Rev. Rec. 59.

That the fact that income was devoted to payment of debts did not release the same from liability to income tax. 7 Int. Rev. Rec. 59.

That the original cost of property destroyed by fire during the year, less insurance received, might be deducted from the income for that

year of the person to whom the loss occurred. 5 Int. Rev. Rec. 154.

That the loss of a stock company by fire or shipwreck, if liable to tax, would be deductible from its income, not from that of its stockholders; and the fact that such company was not subject to income tax made a loss of this kind none the less a loss of the company. 5 Int. Rev. Rec. 148.

That there could be no deduction for depreciation in stocks or other property until disposed of and a loss realized. 7 Int. Rev. Rec. 59. But where stocks were sold for less than actual cost the difference between such cost and the price was allowed as a deduction from income of the year of sale. 7 Int. Rev. Rec. 59.

That losses during the income year on sales of real estate purchased during the income year, or within two years previous, might be deducted from the income for such income year. 7 Int. Rev. Rec. 60. But losses from exchange of real estate are estimated losses while the property is in the hands of the original parties and are not deductible. 41 U. S. Rev. Journ. 77.

That losses of capital such as by robbery, or as surety, etc., could not be deducted. 7 Int. Rev. Rec. 60. And losses in business since the

end of the income year could not enter into the income assessments for that year. Bout. (1863), 275; 1 Int. Rev. Rec. 181; 2 Id. 68.

That no deduction could be made for money paid on a judgment against a taxpayer in an action of tort. 1 Int. Rev. Rec. 155.

That a mere speculative loss, there being no sale, could not be deducted. 3 Int. Rev. Rec. 109. So of estimated depreciations, as of vessels. 1 Int. Rev. Rec. 109, 197. As to the custom of ship-owners to charge off a certain sum on account of the depreciation of vessels, see Bout. (1864), 152.

That the owners of vessels might balance the gains and losses as a whole, setting the gains of one against the losses of another, including even the entire loss of a vessel by capture, shipwreck, or other disaster, on which there was no insurance. Bout. (1863), 303.

That where a farmer lost animals by death, he might deduct the purchase money; but if the animals were raised by him, there could be no deduction. 3 Int. Rev. Rec. 100.

That where a company had collapsed and the stock was worthless, the loss on such stock should be deducted from the income of the year in which the company ceased to exist. 11 Int. Rev. Rec. 105.



*Debts due to the taxpayer actually ascertained to be worthless and charged off within the year.*

It was held under the old acts —

That payment by a surety made the principal his debtor. Whether the debt was worthless or not was a question to be determined in each particular case. Money paid as surety would not necessarily be lost, but when found to be a loss it might be deducted under the head of "debts ascertained to be worthless." 9 Int. Rev. Rec. 121.

That a merchant was entitled to deduct from his gross profits the bad debts of the year to which the statement related, or such as appeared to be bad at the end of the year. *United States v. Mayer, Deady*, 127.

That debts previously considered good, but found to be worthless during the income year, might be deducted from the creditor's income for that year, if never before deducted. 7 Int. Rev. Rec. 60.

That there must be a discretion given in making returns, and that it was not necessary to make a debt deductible that it should be declared worthless at law or in equity. *United States v. Frost*, 9 Int. Rev. Rec. 41, 42.

In construing the New Brunswick act, 31 Vict. c. 36, it is said, "Their Lordships have felt some difficulty in appreciating the



view of the Chief Justice, that the bad debts of the current year are a loss 'pro tanto of capital,' and that, in such case, 'it is the capital invested that is really lost, and not the income.' Surely every banker or trader properly conducting his affairs, would, in the first instance at least, charge losses to income; that is, in ascertaining the income of a year's business, would set the losses of the year against its profits. To treat profits as income and to charge losses to capital would be to enter upon a road leading very directly to financial ruin." *Lawless v. Sullivan*, 6 Appeal Case, 373, 382.

*A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, etc.*

It was held under the old acts —

That estimated appreciations or depreciations of the value of property were not to be considered in ascertaining amounts to be taxed. 5 Int. Rev. Rec. 154.

*No deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.*

It was held under the old acts —

That a person was not allowed to improve the property, but was allowed to devote the income to restoration. 1 Int. Rev. Rec. 180.

That repairs were allowable irrespective of the productive nature of the property. 1 Int. Rev. Rec. 156.

That the replacing of worn-out tools, etc., was repairs, so far as the new article equalled the estimated value of the old on January 1, 1862, and was permanent improvement in the amount by which the value of the new article exceeded that of the old on that date. 2 Int. Rev. Rec. 61.

That the laying of a new floor or putting on a new roof was generally ordinary repairs; but the replacing of a shingle roof by a slate one, or a board floor by a tile one, or indeed the substitution of a higher-priced article for an inferior, was not ordinary repairs, and only the value of the inferior article would be deductible. 11 Int. Rev. Rec. 50.

*No deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate.*

It was held under the old acts —

That a person was not allowed to improve

the property, but was allowed to devote the income to restoration. 1 Int. Rev. Rec. 180.

That repairs should be distinguished from permanent improvements. 2 Int. Rev. Rec. 61. See *Little v. Little*, 161 Mass. 188.

That expenses for ditching, etc., new land were for permanent improvements, and not deductible. 7 Int. Rev. Rec. 58.

That "permanent improvements" and "betterments," as used, were nearly synonymous, and referred to that class of improvements, permanently increasing the value of the property, while "repairs" were those improvements which prevented the property from becoming useless or depreciating; and that in ascertaining the amount to be allowed for repairs, the assessor must determine, according to circumstances, how much of the improvements were to prevent depreciation and how much were to give permanent additional value. 5 Int. Rev. Rec. 130. See 41 U. S. Rev. Journ. 77.

That the replacing of worn-out tools, etc., was repairs, so far as the new article equalled the estimated value of the old on January 1, 1862, and was permanent improvement in the amount by which the value of the new article exceeded that of the old on that date. 2 Int. Rev. Rec. 61.

That the removal of an old roof and the substitution of a modern one, and raising the walls of the building to conform thereto, were improvements. Bout. (1863), 306.

That amounts expended by the purchaser of a building in repairing injuries thereto prior to his purchase were, so far as he was concerned, betterments made to increase the value, and were not deductible. 7 Int. Rev. Rec. 60.

That expenses in putting property in better condition than when purchased, or, if purchased before January 1, 1862, than it was on that date, were not deductible. 11 Int. Rev. Rec. 73.

That the laying of a new floor, or putting on a new roof, was generally ordinary repairs; but the replacing of a shingle roof by a slate one, or a board floor by a tile one, or indeed the substitution of a higher-priced article for an inferior, was not ordinary repairs, and only the value of the inferior article would be deductible. 11 Int. Rev. Rec. 50.

*Amount received as dividends upon the stock or from the net earnings of any corporation, etc., which is taxable upon its net income as hereinafter provided.*

This is deductible for the normal tax but must be reported for the additional tax.

*The amount of income the tax upon which has been paid or withheld for payment at the source, etc.*

See the provisions as to collection at the source, pages 83 *et seq.*

### DEDUCTION OF \$3,000 OR \$4,000 — HUSBAND AND WIFE.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: *Provided*, that only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together.

There is a marked difference between this provision and that in the act of 1894, Sec. 28.



"It is clear that guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity are also authorized to deduct the specific exemption of \$3,000 in the return of net income they are required to make for the person for whom they act. The law is not specific as to this but provides that no return in such cases shall be made if the income does not exceed \$3,000." Speer, 22.

It was held under the old law that an association so formed that its gains were the property of the whole association, and were not divisible among the members, was only entitled to the statutory exemption, and was not entitled to the statutory exemption for each member. 10 Int. Rev. Rec. 39. But see Bout. (1864), 154.

Old decisions and rulings as to husband, wife, etc., may be found in 11 Int. Rev. Rec. 89, 153; 7 Int. Rev. Rec. 59; 2 Int. Rev. Rec. 61; 1 Int. Rev. Rec. 156, 171, 188. See also 41 U. S. Rev. Journ. 77.

## RETURNS — INCREASE OF AMOUNTS.

D. The said tax shall be computed upon the remainder of said net income of each

person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however,* that for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before<sup>1</sup> the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of \$3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place

where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided*, that a return made by one or two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such

person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name

and address or the address, as the case may be, are unknown: *Provided*, that the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further*, that in either case above mentioned no return of income not exceeding \$3,000 shall be required: *Provided further*, that any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who



would be entitled to the same, if distributed: *Provided further*, that persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of \$3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return

should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

This sub-section differs radically from the provisions of previous acts, and a long statement of the differences is likely to confuse. It is to be noted, however, that it was provided in § 29 of the act of 1894 that in the case of neglect or refusal to make a list, or in case of a wilfully false list, it was the duty of the collector or deputy collector to make such list "according to the best information he can obtain, by the examination of such person, or any other evidence." In the act of 1867 it was provided that the books of account might be examined. As to examinations, see now page 193.

It appears from the above that the first tax is on income from March 1 to December 31, and that the deductions are five-sixths of

the exemptions and deductions specified, and that thereafter the reports are to cover the calendar year from January 1 in each case.

Tax income blanks are distributed through post offices, internal revenue offices, and other federal agencies; and, unless the tax is paid at the source, the taxpayer will have to apply for a blank, as the law does not seem to make it obligatory on the Government to send him one.

The return must be verified by oath before an authorized officer having a seal, as a notary; and, if verified before a justice of the peace, a certificate of a clerk of court must be attached. Witnesses probably will not be required. The return will be filed with the collector of internal revenue for the district in which the taxpayer resides; and, if he resides abroad, in the district in which he last resided or in which his principal business is located. In case of sickness or absence, the collector may allow further time for making a return, not exceeding thirty days. See § 3126. See also provisions cited on p. 86. Blank forms of application for extension of time will probably be furnished; if not, the taxpayer may present a petition in his own language stating why extension is necessary. The location of the collector's office may be easily ascer-

tained. A handy list of the location of collectors' offices and their addresses is given in Speer, 66-77.

It is to be noted that a partner is liable individually, and profits to which he would be entitled if divided, whether divided or otherwise, shall be returned for both taxes, and the firm, when requested by the Commissioner of Internal Revenue or Collector, shall forward a statement of profits and the names of those entitled to the same, if distributed. The writer in the Wall St. Journ. in Art. XVII observes that the clause in this sub-division beginning, "*Provided further*, that any persons carrying on business in partnership," etc., "directly levies the tax on all partnership profits, thus eliminating any question as to the character of the partnership." See Art. XI.

It will be seen that those liable for the nominal tax only, individually or for another, are not to make return of income from dividends or net earnings of corporations, etc., taxable upon their net income; that, if they have no other income they need not make a return, and that any person for whom return has been made and the tax paid as aforesaid is not to make a return unless such person has other net income, but only one deduction

of \$3,000 shall be made in the case of any such person.

For determining the additional tax the return must include the share of gains, etc., of all companies, incorporated or partnership, to which the taxable person is entitled, divided or distributed or not divided or distributed, if such companies are formed or fraudulently used to prevent the tax by permitting the gains, etc., to accumulate.

Amounts received from corporations, etc. (the normal tax having been paid), must be included in the return, but only to determine the liability to the additional tax.

Forms of returns are given in Speer, 13, 19.

Early in 1895 Mr. Thomas Harland, a gentleman of great experience in former years in the Bureau of Internal Revenue, wrote a carefully prepared letter or brief upon the law of 1894, in which he called attention to its imperfections and particularly to the inadequacy of the machinery for the assessment of the tax. Mr. Harland quoted in the act of 1894 provisions of § 29, § 34 as amending §§ 3172, 3173, and 3176 of the U. S. Rev. Sts. The letter or brief is given in full in 41 U. S. Rev. Journ. 93-97 and is still of interest, although most of the points raised are met in the present act.



It was held under the old acts as to returns —

That the unexplained destruction or disappearance of the taxpayer's books of account was *prima facie* evidence of fraud. 1 Int. Rev. Rec. 155.

That when a dividend had been declared by a corporation and had become payable, its amount was to be regarded as forming part of the taxable income of the stockholders of the company, even though they did not call for and receive the dividend. *Magee v. Denton*, 5 Blatch. 130.

That the taxpayer was not obliged to answer questions asked him, but his refusal to answer might properly be construed against him. 1 Int. Rev. Rec. 155. Of the law of 1894 it is said in 41 U. S. Rev. Journ. 117, "The law is peculiarly obnoxious to business men, because of its perplexing and harassing requirements as to rendering returns. These requirements should be interpreted, so far as they can be, in a sense favorable to the merchant and the manufacturer. It is impossible for any man in active business to answer categorically questions as to his income, or to determine exactly the application to himself of the numerous vexatious details of the law. It should certainly be sufficient if he honestly

disclose the facts required of him when he is called upon, without fining him for not neglecting his business and dancing attendance upon the pleasure of a collector for the privilege of revealing to him facts that he withholds from everybody else." In a letter dated May 6, 1865, the Deputy Commissioner says: "As to the questions recommended to be asked by assessors — and to which you take objection — it is believed the same are civil, and as such ought to be answered, if an assessor feels bound to ask them. It is not claimed that taxpayers are obliged to answer the same; but a refusal, unless a reason for such refusal is given, might lead the assessor to doubt the correctness of the return. It is not supposed that the mere putting of these interrogatories will be an effectual check to fraud, but the experience of the office has shown that such questions are of great convenience in refreshing the memory of a large class of honest taxpayers, who are not accustomed to keeping accounts, and who, in many instances, cannot call to mind all the sources of their income, unless they are thus reminded. As to the question to which you particularly allude, if the taxpayer answers that he holds no stocks except such as were purchased so recently that he has derived no income from them, the assessor would go

no further, if satisfied of the truth of the statement." 1 Int. Rev. Rec. 155.

That lawyers and physicians might return either the actual fees received during the year, without regard to the time when they accrued, or the amounts due to the business of the year; but that when the taxpayer had heretofore adopted one method, he could not be allowed to make use of the other. 7 Int. Rev. Rec. 59.

That an assessor might require returns of income from persons sojourning in his district for a few months at a time, and transmit the same to the assessors of the several districts in which the parties resided. Bout. (1864), 154.

That the law did not require notice to be served on persons to make returns. 3 Int. Rev. Rec. 151.

That under the act of 1894 the instruction as to the income return by trustees meant that the sum received from trustees by beneficiaries should not be returned as "taxable income"; that the same should be, however, noted as income, or deducted as an amount upon which the tax has already been paid and that the instruction referred practically to cases of beneficiaries who had income in addition to that received from a trustee, and was intended

to prevent escape of income from taxation. Further that, where a trustee distributed taxable income to beneficiaries, he must make a return for each of said beneficiaries, as the taxable interests appeared, at the place of his residence, without regard to the location of the beneficiaries. 41 U. S. Rev. Journ. 77.

That legal representatives should make return for their decedents. *Mandell v. Pierce*, 3 Cliff, 134; 7 Int. Rev. Rec. 59, 193; *Bout.* (1863), 304. See provisions of present act cited on p. 60.

That in the case of an association like the Shakers, its trustees might make return of its income. 10 Int. Rev. Rec. 39.

That in case of persons under guardianship, the guardian, if any, should make return of the ward's income; if none had been appointed, the parent, as natural guardian, might act. If there was no other person to act, the ward might make the return; if he neglected to do so, an independent assessment might be made omitting the penalty. 7 Int. Rev. Rec. 59; 11 Int. Rev. Rec. 186; *Bout.* (1863), 258.

That the guardian's return should always be upon information and belief. 1 Int. Rev. Rec. 181.

That the guardian's residence determined the district for his return; if he resided abroad, the

ward's residence determined the district. 3 Int. Rev. Rec. 172. The duties imposed on trustees and guardians are further discussed in the Wall St. Journ. Art. XIV.

That taxpayers, not cognizant of their responsibilities, ought to be informed of them, and those unable to make out their returns should be instructed. 41 U. S. Rev. Journ. 97.

That even though a false return was accepted without alteration and the tax paid, it had no binding effect upon the government. 41 U. S. Rev. Journ. 97.

It was stated under the old law that it would be a hardship to assess an additional amount upon the income of masters of vessels, who left home before a certain date, being ignorant of the law, leaving no agent, etc., "and it is presumed that assessors might find some means of ascertaining their income without proceeding under" the law. Bout. (1864), 154. The form of notice under the old law to parties charged with failure, neglect, or refusal to make returns is given in 9 Int. Rev. Rec. 113.

### REMEDIES.

The remedies of a taxpayer in case of an increase of the return are a hearing before the collector, and from him an appeal to



the Commissioner of Internal Revenue.  
See p. 64.

Speer says at p. 30 as to claims for abatement or refund of taxes: "If any person shall consider that any tax assessed has been erroneously or unjustly assessed or that the amount of such tax is in excess of the amount actually due, such person may file a claim for abatement before the tax is paid, or a claim for refund after the tax is paid, asking for the refund or return of all or such portion of the tax assessed or paid which is considered to be in excess of the amount actually due.

"Such claims must be prepared on forms furnished by the collectors, who will also furnish full information as to their preparation and the nature of the evidence required in support of the claim. Such claims must be filed with the collector."

The general method of procedure, however, is as follows:

There is no remedy by injunction, as it is provided that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." U. S. Rev. Sts. § 3244.

Points on applications for the writs of mandamus, certiorari, and prohibition against collec-

tors and deputy collectors of internal revenue and against the Commissioner of Internal Revenue may be found in Foster & Abbot, 233-241.

The Commissioner of Internal Revenue is, on appeal made to him, to remit all taxes and penalties illegally collected, etc., provided, that where a second assessment is made in case of a return which was false, such assessment shall not be remitted, unless it is proved that such return was not false. U. S. Rev. Sts. § 3220. Appeal to the Commissioner of Internal Revenue and his decision thereon are conditions precedent to the bringing of suit. If such decision is delayed more than six months from the date of appeal, the suit may be brought, without having a decision at any time within the period limited within the next section. U. S. Rev. Sts. § 3226. The suit must be brought within two years next after the cause of action accrued. U. S. Rev. Sts. § 3227. All claims for the refunding of any illegal tax or penalty must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued. U. S. Rev. Sts. § 3228.

A suit cannot be maintained against a collector to recover a tax illegally assessed or collected without authority, or any sum alleged to have been excessive or in any manner wrong, if the

taxpayer has failed, within two years next after the cause of action accrued, to present to the Commissioner of Internal Revenue his claim for refunding according to law. *Kings Co. Sav. Inst. v. Blair*, 110 U. S. 200.

The general way of contesting a tax has been to pay the money under duress and protest and then sue the collector for money had and received. The taxes should be paid under protest. *Patton v. Brady*, 184 U. S. 608, 614.

“Whilst a written protest would in all cases be most convenient, there is no statutory requirement that the protest shall be in writing. In the present case, the court merely finds that the payment of the tax and penalty was made under protest, which may have been either written or verbal.” *Wright v. Blakeslee*, 101 U. S. 174, 179. As to duress and protest, see further *United States v. New York Steamship Co.*, 200 U. S. 488; *Johnson v. Herold*, 161 Fed. Rep. 593; 26 Att. Gen. Op. 472.

An allowance by the Commissioner of Internal Revenue for the refund of a tax illegally collected is not the simple passing of an ordinary claim by an ordinary accounting officer, but an award upon which an action may be brought and which is conclusive unless impeached for fraud or mistake. *Edison Elec. Co. v. United States*, 38 Ct. of Claims, 208; *United States v.*

Savings Bank, 104 U. S. 728; *United States v. Kaufman*, 96 U. S. 567.

The provisions in § 3226 that no suit shall be maintained to recover back any internal revenue tax claimed to have been illegally or erroneously collected until an appeal shall have been taken to the commissioner and a decision had therein, unless such decision shall have been delayed more than six months, is not merely a statute of limitations, but prescribes an absolute condition precedent, which is not waived by a failure to plead it, and without compliance with which a suit cannot be maintained; but where, before payment of the tax, a claim for its abatement was presented to the commissioner in accordance with the rules of the department, and rejected, the same was equivalent to an appeal, and an appeal after payment on the same grounds was not necessary to authorize a suit. *De Bary v. Dunne*, 162 Fed. Rep. 961. Where an appeal for a rebate of the tax, taken after its assessment, but before its payment, in accordance with the regulations of the department, has been adversely decided by the commissioner on the merits, a second appeal after payment of the tax is not required before bringing suit. *Schwarzchild Co. v. Rucker*, 143 Fed. Rep. 656. As to the proviso and limitations, see *Merck v. Treat*, 174 Fed. Rep. 388;



Christie St. Commission Co. *v.* United States, 129 Fed. Rep. 506; 136 Fed. Rep. 326. The matter of appeal is treated in *Stewart v. Barnes*, 153 U. S. 456, 458.

The remedy of a suit to recover back the tax after it is paid, which the statute provides, is exclusive. *Snyder v. Marks*, 109 U. S. 189.

“The rule is firmly established that taxes voluntarily paid cannot be recovered back, and payments with knowledge and without compulsion are voluntary. At the same time, when taxes are paid under protest, that they are being illegally exacted, or with notice that the payer contends that they are illegal and intends to institute suit to compel their repayment, a recovery in such suit may, on occasion, be had, although generally speaking, even a protest or notice will not avail if the payment be made voluntarily, with full knowledge of all the circumstances, and without any coercion by the actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment, over the person or property of the party making the payment, from which the latter has no other means of immediate relief than such payment.” *Fuller, C. J., in Chesebrough v. United States*, 192 U. S. 253, 259.



The right of action in such cases must be founded upon the acts of Congress, and not upon an implied promise at common law, since a promise to refund cannot be implied where the statute makes it the officer's duty to pay into the treasury all amounts collected. *Collector v. Hubbard*, 12 Wall. 1.

The Commissioner is not limited to paying a judgment against a collector to him, but may pay it directly to the plaintiff. *United States v. Frerichs*, 124 U. S. 315.

The above acts of Congress apply as well to suits in the state courts as those in the Federal courts. *Collector v. Hubbard*, 12 Wall. 1.

The authority of the Commissioner of Internal Revenue to refund a tax is not exhausted by his rejection of an application to refund, but he may afterwards, under U. S. Rev. Sts. § 3220, allow to a collector the amount recovered against him by suit, and such allowance can be impeached only for fraud or mistake. *Nixon v. United States*, 18 Ct. Cl. 448. Such allowance properly includes costs paid. *United States v. Davis*, 54 Fed. Rep. 147. The defence of failure to take an appeal to the Commissioner is waived, if not pleaded in abatement. *Hendy v. Soule*, Deady, 400. If the plaintiff has accepted, without objection, payment of the amount illegally exacted, he thereby surrenders

his right to sue for interest as incidental damages. *Stewart v. Barnes*, 153 U. S. 456.

A decision reported by the Commissioner of Internal Revenue in 1871, as to the refunding of certain taxes, to the Secretary of the Treasury for his advisement, under the Treasury Regulations then in force, was held not to be final. *Stotesbury v. United States*, 146 U. S. 196. See *Dupasseur v. United States*, 19 Ct. Cl. 1; *Sybrandt v. United States*, 19 Ct. Cl. 461. A corporation is not bound to produce its books to the assessor on an inquiry into the income of its stockholders. *Re Chadwick*, 1 Lowell, 439. Under the act of 1866, the lien of the income tax related back, upon demand, to the time when the tax was due, but only as to property belonging to the taxpayer when the demand was made. *United States v. Pacific Railroad*, 1 Fed. Rep. 97. As to the introduction in evidence of an assessment list, regular in form, making a *prima facie* case, see *Western Express Co. v. United States*, 141 Fed. Rep. 28.

The fact that an assessment had been paid did not bar a suit to recover an amount claimed to be due beyond the amount so assessed and paid. *United States v. Little Miami R. Co.*, 1 Fed. Rep. 700.

It was held under the old law that when im-

proper deductions had been made and knowingly allowed, the errors could not be corrected after the tax had been paid, and that when the fact of an understatement had been subsequently discovered, the amount so understated might be increased. 41 U. S. Rev. Journ. 98.

This entire subject is ably treated in Foster & Abbot, chapter VIII, Remedies of Taxpayer.

By U. S. Rev. Sts. § 3229 it is provided that the Commissioner of Internal Revenue, with the consent of the Secretary of the Treasury, may compromise cases under the internal revenue laws instead of commencing suit; and, with the consent of the secretary and the recommendation of the Attorney General, may compromise any case after suit brought. But see Speer, 20.

#### WHEN ASSESSMENTS SHALL BE MADE AND PAID — ADDITIONS IN CASE OF NON- PAYMENT.

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assess-

ments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

The penalty was the same in the acts of 1867 and of 1870, the time of payment being changed. In the act of 1865 it was ten per cent without the clause as to interest. The words "notice and" were added by the act of 1865, which struck out the words "for thirty days," which followed "unpaid" in the third line in the act of 1864. The last part of this paragraph is nearly identical with § 30 of the act of 1894.

In 1871, in *United States v. Dollar Savings Bank*, 15 Int. Rev. Rec. 193, the court said that "the defendant was not reprehensibly in default, but that its refusal to pay the tax claimed was induced by the inconsistent action and the conflicting opinions of the Internal Revenue Department as to its liability, and its reasonable desire, therefore, to have this judicially determined. Under such circumstances interest ought not to be exacted."

The demand under the act of 1866 should state the amount of the tax and demand payment therefor. *United States v. Pacific Railroad*, 4 Dill. 71. See *Magee v. Denton*, 5 Blatch. 130. The method adopted in case of a state statute imposing a tax with interest at the rate of twelve per cent until paid is stated in *Massachusetts v. Western Union Tel. Co.*, 145 U. S. 40.



DEDUCTION AND PAYMENT AT SOURCE OF  
NORMAL TAX.

All persons, firms, co-partnerships, companies, corporations, joint stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as

provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemp-

tion: *Provided*, that if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for

him: *Provided further*, that if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: *Provided further*, that the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds, and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such

interest does not amount to \$3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed \$3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills



of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject

to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offence be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this act takes effect be valid in regard to any Federal Income Tax imposed upon a person liable to such payment.

The tax herein imposed upon annual

gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

The above is what is called stoppage-at-source, collection-at-source, or payment-at-source tax and appears in only one of the former acts, that of 1894. Corporations were to deduct the tax from dividends and, in the case of public officials, the Government was to deduct the tax from their salaries. See §§ 28, 32, and 33.

The origin of this tax and the experiences of other nations in levying it are set forth in Seligman, 36-38, 90-91, 98, 216, 270-271, 312, 324, 325, 347, 353, 526-527, 659-660. On page 661 he says, "In the United States the arguments

in favor of the stoppage-at-source income tax are far stronger than in Europe, because of the peculiar conditions of American life. In the first place, nowhere is corporate activity so developed, and in no country of the world does the ordinary business of the community assume to so overwhelming an extent the corporate form. Not only is a large part of the intangible wealth of individuals composed of corporate securities, but a very appreciable part of business profits consists of corporate profits. In the second place, in no other important country are investments to so great an extent domestic in character. The one great difficulty in England, as we have learned, is that connected with foreign securities. And in France, where the same difficulty exists, we have learned that the projected control of these foreign investments through the French bankers and agents forms the one difficult and complicated point in the scheme. In the United States, on the other hand, the situation is the reverse. Instead of our capitalists seeking investments abroad, it is the foreign capitalist who purchases American securities. We are, therefore, fortunately exempt from the chief embarrassments which confronts Europe; and there is every likelihood that this situation will not be changed for some time to

come. The arguments that speak in favor of a stoppage-at-source income tax abroad hence apply with redoubled force here. The stoppage-at-source scheme lessens, to an enormous extent, the strain on the administration; it works, so far as it is applicable, almost automatically; and, where enforced, it secures to the last penny the income that is rightfully due. Can there really be any doubt as to the preference to be given to the stoppage-at-source income tax over either the lump-sum or the presumptive income tax under American conditions?"

On the other hand this feature of the present bill is the one which has aroused the most hostility and opposition, and it is the one which will doubtless give rise to the most embarrassments.

The writer in the Wall St. Journ. in Art. VI says, "Practically all public utility companies are obliged to make reports to State Boards of Commissioners. All railroads make reports to state boards, as well as to the Interstate Commerce Commission. To comply with the system adopted by the Interstate Commerce Commission and the state boards many railroads had to modify their methods of accounting and of defining the various items of the account.

"There is practical uniformity now, and to



introduce a new system to comply with the requirements of the proposed income tax law would cause endless confusion. The companies would find themselves compelled by law to file two sets of reports with the United States Government — one with the Internal Revenue Department and one with the Interstate Commerce Commission."

The same writer in the Wall St. Journ. in Art. XIV, after discussing at length the duties imposed on guardians and trustees, says, "As to the first sort of stoppage (incomes over \$3,000 or \$4,000) all vital difficulties would be wiped away if the obligation to make returns on behalf of another could be circumscribed as herein suggested, and if income should be required to be reported at its source, without the physical collection of the tax at the same time. This would eliminate all of the complications relating to deductions, exemptions, and the duplication of returns, while at the same time the Government would be as sure of collecting the full tax as if the tax was actually withheld at the source."

He further says, speaking of the second sort of stoppage, 1 per cent of all interest on the bonds and debts of corporations, no matter what the amount of income, "Starting with the premise that the chief value in this sort of

stoppage is the information derived therefrom, we suggest two simpler and cheaper methods:

“Either (1) abandon this form of stoppage altogether, and rely on the affidavits of the persons taxed.

“Or (2) require the institution which pays the interest (whether it be the debtor corporation or its paying agent) to retain 1 per cent of each interest payment, and remit it to the collector of the district, together with a statement showing (a) to whom fully registered bond interest was paid, and (b) for what debtor corporation and in what amount all the remainder of such interest instalment was paid. Adequate penalties should also be imposed for failure to comply with these requirements. Free all other persons and institutions from responsibilities in the matter. This method will have these advantages:—

“(a) The first corporations, trust companies, or banks paying interest money, and only those, will be burdened with this matter, thus reducing the volume of work immensely.

“(b) The work (on the part of the Department of Internal Revenue) will be much simplified by concentrating all data respecting each debtor corporation upon one collector.” See further on this subject Arts. II, III, IV.

The same writer in the Wall St. Journ. in

Art. XVI says that he had previously raised these objections to "collection at the source."

"1. That it threw the burden of taxation on the stockholder who paid the interest rather than on the bondholder who received the income, because of the covenant in a large majority of bonds which forbids the retention of any tax the company might be called upon to withhold.

"2. It made the stockholder pay a tax for non-taxable persons, because the tax levy was on incomes in excess of a certain amount, whereas the machinery of collection exacted retention of a tax on all incomes.

"3. It exacted a tax on small incomes where there was no guaranty clause, and left the recipient — though non-taxable — seemingly without recourse."

After referring to the effort of the Senate Caucus to meet the situation by certain amendments, the writer says, "What the Wall Street Journal suggested was that the paying company be authorized by Congress to require disclosure of the identity of the owner of the coupon, either by indorsement or otherwise, before payment. Then anyone who accepted an unindorsed or unidentified coupon would do so at his peril and could not claim exemption."

The writer says further that the imposition of a tax on every bondholder is accomplished through these amendments:

First, by changing the levy from a tax on income "over and above \$4,000," to a tax on income "except as hereinafter provided." (See A, subdivision 1.)

Second, by the amendment to the rules for computing net income. "There shall be allowed as deductions . . . .

"Eight, the amount of income, the tax upon which has been paid or withheld for payment at the source," etc. (See B.)

"Provided, further, that the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, etc."

"Inasmuch as the only requirement in the bill for deduction at the source on incomes of less than \$3,000 is in connection with income from bond or similar investments, it seems clear from the foregoing quotations that it is the intention of the framers of the bill to tax income derived from bonds no matter how small it may be. It seems a case of deliberate penalization of corporate investment."

There is such a lack of practical information as to procedure and rulings and decisions that few suggestions can be given relative to com-

pliance with the above statutory provisions as to collection at the source.

It is to be noted, however, that the surtax is to be collected direct from persons with incomes in excess of \$20,000, and that collection at the source applies only to incomes between \$3,000 or \$4,000 and \$20,000.

That those who fail to make the return, withhold the tax and pay it, must themselves pay it.

That, in the case of payment of dividends by corporations, no deduction or return of the name of the person to whom paid is required.

That the persons, firms, etc., undertaking the collection of foreign payments of interest and dividends, etc., must make application for license without any notice from the Commissioner of Internal Revenue.

That no tax is to be withheld at the source prior to November 1, 1913.

See further as to collection at source, pp. 83 *et seq.*

#### PENALTIES IN CASE OF REFUSAL OR NEGLECT TO MAKE RETURN AND IN CASE OF FRAUDULENT RETURN.

F. That if any person, corporation, joint-stock company, association, or insurance



company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

This sub-section seems to be largely new.

*Ex post facto* laws, as applied to criminal offences, are constitutionally invalid, but they do not apply to laws intended to protect vested rights of property. Retrospective laws strictly apply only to civil rights and remedies, and are invalid only when they infringe upon rights vested under existing laws. Every law

that is to have an operation before the making thereof, as to commence at an antecedent time, or to save time from the statute of limitations, or to excuse acts which were unlawful, and before committed, and the like, is retrospective. *Calder v. Bull*, 3 Dallas, 386. See also *Ex parte Medley*, 134 U. S. 160; *United States v. 64 Barrels of Spirits*, 3 Cliff. 308; *Kille v. Reading Iron Works*, 134 Penn. St. 225.

So a contract right under a statute is a vested right which cannot be impaired by a repeal of the statute. *Steamship Co. v. Joliffe*, 2 Wall. 450; *Koshkonong v. Burton*, 104 U. S. 668.

The established rule appears to be that a forfeiture takes place when the offence is committed, although in the early case announcing this rule Judge Story held, in a dissenting opinion, that a forfeiture attached to a thing conveys no property therein to the Government until seizure made or suit brought. *United States v. 1960 Bags of Coffee*, 8 Cranch, 398. See *United States v. The Mars*, 8 Cranch, 417.

It is competent for Congress to impose taxes retrospectively. *Stockdale v. Ins. Cos.*, 20 Wall. 323; *Locke v. New Orleans*, 4 Wall. 172.

A statute which, after annual settlements, authorized county auditors in Ohio to extend back, for four years, inquiries as to property

returnable for taxation, was held constitutional. *Sturges v. Carter*, 114 U. S. 511.

But penalties added for such previous years are within a constitutional prohibition against retroactive laws. *Gager v. Prout*, 48 Ohio St. 89; *Ryan v. State*, 5 Neb. 276.

So penalties which have accrued for non-payment of a tax, but which have been swept away by a repeal of the tax law, cannot be revived by new legislation. *State v. Jersey City*, 37 N. J. Law, 39.

An additional penalty may lawfully be prescribed for an act previously unlawful. *Mackey v. Holmes*, 52 Fed. Rep. 722.

The penalty of one hundred per cent imposed by the act of 1867 for fraudulent omission of taxable property from a return, could not be collected if the reassessment included a sum not legally taxed, or until the assessor had himself adjudged the omission to be false and fraudulent, and the penalty to have been incurred. *Michigan Central R. Co. v. Slack*, *Holmes*, 231.

Only one penalty is recoverable for all failures to make the required return prior to the commencement of a suit to recover the penalties for such failure. *United States v. Brooklyn City & N. R. Co.*, 14 Fed. Rep. 294; *United States v. New York Guaranty Co.*, 8 Ben. 269.

## CORPORATION TAX — WHAT CORPORATIONS ARE EXEMPT.

[The provisions as to the corporation tax in the act of 1894, § 32, were much narrower than those of the act approved August 5, 1909, known as "The Corporation Tax" law (36 U. S. Sts. at Large, c. 6, pages 11, 112-117). Said § 32 was largely new. However, § 120 of the act of 1864, which imposed a duty of five per cent on dividends in scrip or money, was not materially changed by later acts. By § 15 of the act of 1870 there was to be levied and collected for and during 1871 "a tax of two and one half per centum on the amount of all interest or coupons paid on bonds or other evidences of debt issued and payable in one or more years after date, by" a portion of the corporations named in § 32 of the act of 1894, "and on the amount of all dividends of earnings, income, or gains," declared by them. The present act is largely founded on that of 1909.]

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or

accruing from all sources during the preceding calendar year to every corporation, joint-stock company, or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: *Provided however*, that nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations



and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare; *Provided further*, that there shall not be taxed under this section any income, derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any po-

litical subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, that whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory has, prior to the passage of this act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corpora-

tion from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

The first part of the first paragraph of § 38 of the act of 1909 differs somewhat from the above. It provides that every corporation, etc., organized for profit and having a capital stock represented by shares, and every insurance company organized here or under the laws of any foreign country and engaged in business here shall pay annually a special excise tax equivalent to one per centum upon the entire net income over \$5,000, received from all sources, exclusive of amounts received as dividends from other corporations, etc., subject to the tax hereby imposed, or if organized abroad, upon the amount of net income over \$5,000, received here, exclusive of amounts so received as dividends upon stock of other corporations, etc., subject to the tax hereby imposed.

The part of the above paragraph of the present act enumerating exemptions is far broader than the provision in the act of 1909. In the present act all after the words "inures to the

benefit of the private stockholder or individual" is new.

The following decisions and rulings relate to § 38 of the act approved August 5, 1909, known as "The Corporation Tax" law, 36 U. S. Sts. at Large, c. 6, pages 11, 112-117. The constitutional validity of this law was declared in *Flint v. Stone Tracy Co.*, 220 U. S. 107.

"Corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute, and in the capacity necessary to make such organizations subject to the law." So of companies owning and leasing taxicabs and collecting rents therefrom. So of public service corporations providing means of transportation and supplying artificial light, water, and the like. *Flint v. Stone Tracy Co.*, 220 U. S. 107, 171, 172.

Foreign steamship companies engaged in the business of transporting passengers, goods, and merchandise between ports in this country and foreign ports, and maintaining passenger and

freight agencies in this country are corporations subject to tax. 28 Atty. Gen. Op. 211.

Companies organized under a declaration of trust to improve and hold real estate, the title to which is vested exclusively in trustees removable by vote of the stockholders, and the stock being transferable, which companies possess all of the essential elements of a common law joint stock company, are "joint stock companies or associations organized for profit and having a capital stock represented by shares," organized under the laws of a state and are amenable to the tax. 28 Atty. Gen. Op. 234.

A trust formed in a State, where statutory joint stock companies are unknown, for the purpose of purchasing, improving, holding, and selling land, and which does not have perpetual succession, but ends with lives in being and twenty years thereafter, is not within the provisions of this statute. *Eliot v. Freeman*, 220 U. S. 178. So of a corporation, the sole purpose of which is to hold title to a single parcel of real estate subject to a long lease and, for convenience of the stockholders, to receive and distribute the rentals arising from such lease and proceeds of disposition of the land, and which has disqualified itself from doing any other business. *Zonne v. Minneapolis Syndi-*



cate, 220 U. S. 187. So a corporation organized to take over real estate and leasehold interests owned by a dry goods corporation, leasing such property to the dry goods corporation, collecting rents, and distributing them among its stockholders, and which has executed a lease to the dry goods corporation and surrendered the management, is not subject to the tax, although it was organized under a law relative to the organization of business corporations for profit. *Emery Realty Co. v. United States*, 198 Fed. Rep. 242. If property owned by a corporation cannot be directly taxed if owned by an individual, it cannot be so taxed by virtue of its corporate ownership. Same case.

Where a corporation was organized to own the stock of a mining company, and had no assets except such stock, a small amount in bank and office furniture, etc., and did nothing other than receive dividends from the operating company and distribute them as such among its own stockholders, it was held not subject to the tax. But the judgment awarded the company upon a counter claim in an action brought to recover a tax assessed under the Corporation Tax Law was reversed. *United States v. Nipissing Mines Co.*, 206 Fed. Rep. 431.

A railroad corporation, which has leased its

property for a term of years and parted with its control and management, but which maintains its corporate organization and collects rentals from the lessee company and distributes the same among its stockholders, is not "engaged in business" within the meaning of the act and is not liable for taxes thereunder, notwithstanding the lease provides for recovery of property in case of default. The receipt of income by the lessor from invested funds and the distribution thereof among the stockholders, and payment of expenses of office and of salaries of officers, etc., does not constitute such a business as is taxable. *McCoach v. Minehill R. Co.*, 228 U. S. 295; 192 Fed. Rep. 670.

Certain individuals owning the business of a department store also owned the real estate rented by a firm operating the department store, and, in order to control the real estate, lease, rents, etc., more conveniently, organized the plaintiff corporation, of which they owned the stock, under the New York Business Corporations Law. The corporation was first authorized to buy, sell, rent, and exchange real property, build, construct, and alter houses thereon, manage and develop property, deal in goods, wares, and merchandise, and carry on any business connected therewith, etc. It in fact did no business, except own and operate

the real property in question, and on December 26, 1911, amended its certificate of incorporation, so as to limit its powers to the mere ownership and rental of such property, with a distribution of the proceeds. It was held that the plaintiff had no property right in the form of a business privilege, and was not doing business, so as to be taxable. *Abrast Realty Co. v. Maxwell*, 206 Fed. Rep. 333.

The plaintiff having been assessed for corporation taxes in January, 1912, and the same not having been paid, a writ of distraint was issued by the collector, and the corporation having been notified that the tax would be collected by levy, the deputy collector took from a representative of the corporation the amount of the tax, against the verbal protest of the corporate officer at the time, and a written notice of protest then served, in which the corporation denied that it was liable to the tax. It was held that the protest was sufficient to entitle the corporation to recover the amount from the collector, on its being determined that the corporation was not within the law. *Abrast Realty Co. v. Maxwell*, 206 Fed. Rep. 333.

Under Rev. Sts. §§ 3224, 3226, conferring on a party who has paid a tax to the United States under protest the right to sue for its recovery, and forbidding the maintenance of

any suit to restrain the assessment or collection of taxes by the United States, a corporation had an adequate remedy at law to recover internal revenue taxes assessed against its income under the act of August 5, 1909, and hence a stockholder could not maintain a suit to restrain the corporation from paying the tax on the ground that the corporation was not subject to assessment. *Straus v. Abrast Realty Co.*, 200 Fed. Rep. 327.

The tax imposed by this section was not intended to include insolvent corporations with no net income whose properties are being administered by a court. *Pennsylvania Steel Co. v. New York City R. Co.*, 176 Fed. Rep. 471.

The tax "with respect to carrying on or doing business by" corporations, etc., is one upon doing business in a corporate capacity, and receivers of an insolvent corporation not doing business when the act was passed and having done no business since are not within the act. *Pennsylvania Steel Co. v. New York City R. Co.*, 198 Fed. Rep. 774.

The act does not include the property of street railroad companies in the hands of receivers appointed by federal courts, notwithstanding the property seized does not include the franchise to be a corporation and its organization is maintained. *Pennsylvania Steel Co.*



*v. New York City R. Co.*, 193 Fed. Rep. 286; 176 Id. 471.

Mining corporations are included in the act. *Stratton's Independence v. Howbert*, 23 Treas. Decis. (1796). A corporation organized under the laws of New Jersey, but doing business in Cuba, was held liable to tax in 25 Treas. Decis. (1863). So also a corporation organized under the laws of New Jersey and doing business wholly within the Philippine Islands. 29 Atty. Gen. Op. 164.

Under 24 St. 505, as amended by 36 St. 1087, 1168, the suit to recover taxes may be brought against the United States instead of against the collector of internal revenue. *Emery Realty Co. v. United States*, 198 Fed. Rep. 242. A corporation to be subject to the tax must be organized to do business and must be engaged in it. Same case, 242.

The tax must be strictly construed and all reasonable doubts must be against the government. *Mutual Benefit Ins. Co. v. Herold*, 198 Fed. Rep. 199; *Parkview B'ld'g Ass'n v. Herold*, 203 Fed. Rep. 876.

Corporations engaged in business after August 5, 1909, but dissolved before December 31, 1909, were held liable to the tax. 28 Atty. Gen. Op. 241.

Assets of a corporation are subject to the tax



lien created by U. S. Rev. Sts. § 3186 as amended by the act of March 1, 1879. If the corporation is dissolved before the taxes become due and no lien attaches to its assets, the tax may be collected by the Government by pursuing the assets into the hands of the stockholders, in the same manner as any other creditor might obtain satisfaction of his debt. 28 Atty. Gen. Op. 241; 19 Treas. Decis. (1615). By the act of March 4, 1913, c. 166, § 3186 was amended so as to read as follows: "SEC. 3186. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: Provided, however, That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: Provided further, Whenever any state by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that state, or in the State

of Louisiana in the parishes thereof, then such lien shall not be valid in that state as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated."

A corporation which has continued in business through a calendar year cannot evade the tax by dissolving before the time when required to make a return, and the officers must make such return. *United States v. General Inspection Co.*, 192 Fed. Rep. 223. See *General Inspection Co. v. United States*, 24 Treas. Decis. (1850).

"A certificate from the Secretary of State under the laws of which the corporation was organized that the corporation had complied with the requirements of the laws of the State necessary to effect its legal dissolution is considered the best evidence" of such legal dissolution. 20 Treas. Decis. (1673).

In *Pacific B'ld'g & Loan Ass'n v. Hartson*, 201 Fed. Rep. 1011, it was held that the plaintiff was not "organized . . . exclusively for the mutual benefit of the members, no part of the net income of which inures to the benefit of any private stockholders or individuals."

If a corporation is not organized for profit and its method of doing business is purely of a mutual character, there is no liability. 21 Treas. Decis. (1713).

In *Parkview B'd'g Ass'n v. Herold*, 203 Fed. Rep. 876, a building and loan association was held to be for the mutual benefit of its members and hence exempt, though under its plan of operation there might be inequality in the returns to the prepaying stockholder, etc., since the word "mutual" was not to be construed as synonymous with "equal."

Instructions as to when names of corporations should be removed from lists of corporations are given in 20 Treas. Decis. (1673).

Some of the decisions on the early statutes may possibly be made to apply to the present law. They are collected in *Foster & Abbot*, 331 *et seq.*

It should particularly be borne in mind that the act of 1909 was a special excise tax law and under it corporations were required to be organized for profit and have a capital stock represented by shares, etc., to be taxable. The present act provides that "the normal tax . . . shall be levied, etc., upon the entire net income arising or accruing from all sources," etc. Hence many corporations declared in the above-cited decisions to be exempt from taxation

under the act of 1909 are taxable under the present act.

Valuable notes on the corporations, organizations, etc., exempt from taxation, as provided above in G (a), are given in Speer, 33-36.

### NET INCOME OF DOMESTIC AND FOREIGN CORPORATIONS — DEDUCTIONS.

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a

reasonable allowance for depletion of ores and all other natural deposits, not to exceed five per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided*, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, that mutual marine insurance companies shall



include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policy-holders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policy-holder as shall have been paid back or credited to such individual policy-holder, or treated as an abatement of premium of such individual policy-holder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount

of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided*, that in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further*, that in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking asso-

ciation, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country: *Provided*, that in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it

within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed five per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policy-holders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are

retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, that mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policy-holders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policy-holder as shall have been paid back or credited to such individual policy-holder, or treated as an abatement of premium of such individual policy-holder within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness



not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, that in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with

State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

In regard to the provision beginning with (first) in the act of 1909, "actually" appears after "expenses" and "out of income" after "year"; and the clause "including all charges such as rentals or franchise payments" is in the present act "including rentals or other payments."

In regard to the provision beginning with (second) in the present act the words "by use, wear and tear" after "depreciation" and the clause as to mines are new. The order of the last clause as to insurance companies is changed, and the provisions which follow as to mutual fire and marine and as to life insurance companies are new.

The provision (third) in the act of 1909 is as follows: "(third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a

bank, banking association, or trust company, all interest actually paid by it within the year on deposits."

The provision (fourth) in the act of 1909 is as follows: "all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country as a condition to carrying on business therein."

In the act of 1909 there is (fifth) as to amounts received as dividends upon stock of other corporations, etc., which does not appear in the present act. The writer in the Wall St. Journ. in Art. X declares that there is a deliberate purpose to introduce punitive legislation into the present act. "The idea seems to be, indeed, is frankly avowed, that holding companies are bad in themselves and should be discouraged by indirection. At the same time they make easy subjects for taxation." As to the act of 1909, see 28 Atty. Gen. Op. 140.

The remainder of this sub-section relative to corporations, etc., organized under the laws of a foreign country, differs somewhat from the provisions of the act of 1909, and is in many respects similar to the provisions of the first part of this sub-section relative to corporations, etc., organized in this country.

The writer in the Wall St. Journ. in Art. XV says: "Real estate corporations also benefit under an amendment, dealing with the subject of a tax on the interest on indebtedness, where such indebtedness exceeds the capital employed. In the House bill, as pointed out in the Wall Street Journal of June 23 and 24, no deduction from gross income is allowed for interest paid on debt in excess of capital, thus forcing the payment of an income tax on outgo. It is now provided that in computing net income a corporation may deduct from gross the interest not exceeding 'one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding.'

"Thus, in the case cited in Article VII of this series, where a corporation has bought a loft building for \$100,000, paying its entire capital of \$20,000 for its equity and executing a mortgage for \$80,000, it would be required to pay an income tax on the interest it pays out on only \$20,000 instead of on \$60,000, as under the House bill.

"So, also, in the case cited in Article VI of this series, where the Interborough Rapid Transit Co., with capital of \$35,000,000 and a bonded debt of \$170,000,000, would have been called on to pay an income tax on the interest it paid out on \$135,000,000 of its bonds,

under the Senate amendment, this income tax on debt would be reduced to 1% on the interest it paid on \$50,000,000 instead of on \$135,000,000."

As to premium dividends of a life insurance company not being taxable as part of the company's "net income," see *Mutual Benefit Ins. Co. v. Herold*, 198 Fed. Rep. 199; 201 Id. 918. As to a dividend in case of a full-paid participating policy, see 198 Fed. Rep. 199. As to the "net income" of a mining company, see *Stratton's Independence v. Howbert*, 23 Treas. Decis. (1796). The word "income" was held to mean that already received, and "net income" in the case of insurance companies was held not to include uncollected and deferred premiums and interests, accrued and due, but not actually received. *Mutual Benefit Ins. Co. v. Herold*, 198 Fed. Rep. 199.

An ordinary expenditure by a mutual life insurance company for renewal of office furniture and equipment was held an expense of maintenance and operation, which it was entitled to deduct. *Mutual Benefit Ins. Co. v. Herold*, 198 Fed. Rep. 199.

That the amount paid by a corporation as a tax could not be deducted as an expense of business. See 10 Int. Rev. Rec. 57. But that the amount paid as taxes on the capital, cir-



culatation, and deposits during the period covered by the return might be deducted like other expenses. See 5 Int. Rev. Rec. 74.

That the amount paid as premium upon United States bonds purchased by the corporation was not deductible as a loss from gross earnings, as it was a part of the investment. See 5 Int. Rev. Rec. 74.

That to get at the amount of taxable gains only such losses as had been ascertained and settled during the period covered by the return should be deducted. See 5 Int. Rev. Rec. 74. And that no deduction was to be made on account of a part of the earnings being the interest upon railroad bonds owned by the corporation, and upon which a tax had been withheld, or on account of tax withheld by other corporations from dividends payable to it. See 5 Int. Rev. Rec. 91.

That the value of ore cannot be charged off as depreciation, see *Stratton's Independence v. Howbert*, 23 Treas. Decis. (1796). See pp. 164 *et seq.* The contention that the tax was on the corpus and thus unconstitutional was not sustained. Same case. As to a mutual insurance company being allowed to deduct a certain reserve from its income, see *Mutual Benefit Ins. Co. v. Herold*, 198 Fed. Rep. 199.

COMPUTATION OF TAX — RETURNS —  
ASSESSMENTS AND NOTICE.

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: *Provided however*, that for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year: *Provided further*, that any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on

the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after

the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the

gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and



in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policy-holders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and re-insurance reserves: *Provided further*, that mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for re-insurance, but shall be entitled to include in deductions from gross income amounts repaid to pol-

icy-holders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policy-holder as shall have been paid back or credited to such individual policy-holder, or treated as an abatement of premium of such individual policy-holder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums

other than dividends paid within the year on policy and annuity contracts: *Provided further*, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policy-holders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, that mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them, less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policy-holders on account of premiums previously paid by them and interest paid upon such amounts between the as-

certainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policy-holder as shall have been paid back or credited to such individual policy-holder, or treated as an abatement of premium of such individual policy-holder, within such year; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or in-

surance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from the business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such re-



turns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: *Provided*, that every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of In-

ternal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

The act of 1909 provides that there shall be deducted from the amount of the net income

the sum of \$5,000, and the tax shall be computed upon the remainder. The provisions in the present act through the words "upon which its annual return shall be filed," are new.

In the present act the provision beginning with the words, "All corporations, joint-stock companies or associations" and ending with the words "setting forth" just before "(first)" is considerably changed from the provision in the act of 1909.

The provision beginning with "(first)" in the present act differs from that in the act of 1909 in that the words "or if no capital stock its capital employed in business" are inserted.

At the end of the provision beginning with "(third)" there is a clause in the act of 1909 as to dividends upon stock of other corporations, which does not appear in the present act.

The provision beginning with "(fourth)" is the same in both acts save that the words "all charges such as rentals or franchise payments" in the act of 1909 are changed to "all rentals or other payments," in the present act.

The first part of the provision beginning with "(fifth)" is the same in both acts, save that the order of the words in the clause beginning with "in case of insurance companies" is changed. The provisions as to insurance

companies each beginning with "Provided further" are new in the present act.

In the act of 1909 "sixth" is as follows. "The amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States."

As to "seventh," the words "as a condition to carrying on business therein" in the act of 1909 do not appear in the present act.

The last paragraph of this sub-section beginning with the words "all assessments shall be made" and ending with the words "from the time the same becomes due" is identical with the last part of paragraph "Fifth" of the act of 1909, except that in the present act there is inserted the clause beginning "*Provided*, that every corporation" and ending with "income for assessment." Also towards the end of the paragraph the clause "as provided for in this section or by existing law" is substituted for "as above provided for."

The words "or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer" are inserted in the present act.

### INSTRUCTIONS AS TO RETURNS.

In 23 Treas. Decis. (1806) it is stated that "it is incumbent upon every corporation, not specifically enumerated as exempt, to file its return within the prescribed time or, in lieu of a return, to file a statement within that time showing that it is exempt by reason of the character and purpose of its organization, and whether or not it was actually carrying on or doing business for profit during the year for which the return is required."



Returns filed on or before March 1, which were returned for amendment and again received by the collector after March 1, will be marked as received by the collector on the date of first filing. 20 Treas. Decis. (1705).

Increased valuations of assets entered on books of corporations to be included in gross income in their returns of annual net income. Such increased valuations are not required to be entered on books. 20 Treas. Decis. (1706).

All corporations of the kinds specified in the act as subject to the tax are bound to file returns, though their net profits are not sufficient to render them liable to the tax. *United States v. Military Const. Co.*, 204 Fed. Rep. 153; *United States v. Acorn Roofing Co.*, 204 Fed. Rep. 157. Every corporation subject to the tax must make returns whether or not its net income is large enough to make it liable for any amount of the tax. For a mere failure to make such returns in time, in the case of corporations with incomes so limited as not to be liable to the payment of any tax, liberal compromise is a course required by the spirit and policy of the laws of the United States. 29 Atty. Gen. Op. 219.

Under a State corporation law it was held that the officers of a corporation, which had

dissolved, were to make the return. *United States v. General Inspection Co.*, 192 Fed. Rep. 223.

As to when so-called mutual building and loan associations should make the required return, see 19 *Treas. Decis.* (1655).

Where returns are filed within the time required and returned for correction, and correct returns subsequently filed, names should be stricken from delinquent list. 21 *Treas. Decis.* (1711).

Instructions as to regular lists and all corporation-tax lists are given in 19 *Treas. Decis.* (1639). As to not granting extension of time where the application was not made on or before a certain date, see 20 *Treas. Decis.* (1702).

Suggestions as to returns by manufacturing and mercantile corporations are given in 19 *Treas. Decis.* (1588).

Inspection of returns of corporations, executive order, and regulations will be found in 19 *Treas. Decis.* (1665).

It was held in *United States v. General Inspection Co.*, 204 Fed. Rep. 657, that the notice of the assessment required to be given to the corporation by subdivision 5 of the act of 1909 might lawfully be given by mail, and a notice so sent by the collector in a

franked envelope bearing a return card, addressed to the corporation at the place of its principal office, and not returned, was presumptively received, and the burden rested on the corporation to prove to the contrary, to avoid the penalty.

The following synopsis of decisions made from time to time was published for the information of internal revenue officers and others concerned by the Commissioner on Dec. 15, 1911, and will be found in 21 Treas. Decis. (1742). As previously stated, some of these decisions are not applicable to the present law.

#### CLASS OF CORPORATIONS, ETC., SUBJECT TO TAX.

1. The tax imposed by the act applies to all corporations, joint stock companies, and associations, and every insurance company except those specifically exempted, without reference to the kind of business carried on.

2. Every corporation, etc., not specifically enumerated as exempt shall make the return required by law, although its net income during the year may not have exceeded the statutory amount. 28 Atty. Gen., Op. 140. See *United States v. Acorn Roofing Co.*, 23 Treas. Decis. (1784).

3. Corporations claiming special exemption should nevertheless make return (in blank, if desired) accompanied by a statement setting forth the ground on which exemption is claimed. Failure to receive blanks upon which to make return is no excuse for delinquency in making return, as there is no duty imposed upon the Government to furnish corporations with such blanks.

4. Charitable institutions supported by voluntary contributions or State appropriations are held to be exempt from the payment of the special excise tax on corporations, but should file a return in blank as provided in paragraph 3 thereof.

5. Corporations, etc., organized during the year or going into liquidation during the year should nevertheless render a sworn return on the prescribed form. The tax imposed, however, does not apply to corporations which went out of existence prior to the passage of the act (Aug. 5, 1909).

6. Where company has dissolved and the required return is not made by its officers, such return will be prepared by commissioner. (T. D. 1736.)

7. Where corporation has gone into bankruptcy, returns in such cases to be made by trustee in bankruptcy.

8. Railroad companies operating leased or purchased lines to include all receipts derived therefrom, and if bonded indebtedness has been assumed may deduct interest thereon to an amount not exceeding its own paid-up capital stock. If such subsidiary companies receive income in the way of rentals, etc., return to be also made by such companies.

9. Corporations, etc., organized under the authority of the United States, or any State or Territory thereof, or Alaska, or the District of Columbia, to include in their returns not only the income derived from the business carried on within the confines of the United States, but income received from business transacted in any foreign country as well.

10. Corporations having branch or subsidiary companies to include in their returns the income of all such companies when no distinction is made in operating and accounting by reason of the separate incorporation of such subsidiary companies; otherwise a return by each corporation should be made.

11. Foreign companies having several branch offices in the United States should each designate one of such branches as its principal office and should also designate the proper officers to make the required return.

12. Where a consolidation of two or more



corporations has been effected during the year, and each or any such corporation subsequent to such consolidation collects prior existing debts, each such corporation should make separate return and include therein all such collected debts, as also all income received during the year prior to the date of consolidation.

13. "Principal place of business" is held to mean the principal office where the company keeps its books from which the required return is to be prepared and not necessarily the place where the operating plant is located.

14. As the law specifically provides that the tax imposed shall be computed on the net income during each calendar year, returns of income based on any period other than the calendar year cannot be accepted.

15. Full amount of stock, as represented by the par value of the shares issued, to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation.

16. Capital stock held to include both preferred and common stock.

17. Surplus and undivided profits not to be included in capital stock.

18. Holding companies known as "voting

trusts," receiving only dividends on stock held, and having no capital stock, etc., not liable. But see now pp. 8, 125.

19. Mutual savings banks having no capital stock not liable to tax imposed. (28 Atty. Gen. Op. 189.)

20. Coöperative dairies not issuing stock and allowing patrons dividends based on butter fat in milk furnished not liable.

21. Foreign steamship companies having no office in the United States, whose vessels only occasionally touch at ports in the United States, not regarded as doing business in this country within the meaning of the statute.

In an opinion of the Attorney General it was held that the act includes "foreign steamship companies having agencies in this country and engaged in the business of transporting passengers, freight or mail; that as the tax so imposed is not upon the property of the corporation or the income derived therefrom, but is a special excise tax with respect to the carrying on or doing business, such tax, as applied to the business so carried on by such foreign steamship companies, is not upon exports or upon the income derived from the transportation of such exports." 19 Treas. Decis. (1600).

22. Companies organized in Porto Rico and not engaged in business in the United States not subject to tax. See p. 200.

23. Corporations owning sugar or other plantations and disposing of the products thereof not entitled to exemption as agricultural organizations.

24. Corporations organized to sell provisions, etc., to stockholders and others not exempted.

25. Corporations organized for the purpose of holding real estate to make return of income derived from the property so held.

26. Corporations going into liquidation during any tax period, may, at the time of such liquidation, prepare a "final return" covering the business done during the fractional part of the year during which they were engaged in business, and immediately file the same with the collector of the district in which the corporation has its principal place of business.

27. Corporations organized for the purpose of insuring against death, or injury by accident, or against damage to property by hail, storm, or lightning, however maintained, are held to be insurance companies, and unless they may be properly classed as "fraternal beneficiary organizations operating under the lodge system," must make returns of annual net income. (T. D. 1738.)

28. Corporations engaged in agricultural or horticultural pursuits for profit are liable under the law to make returns and to pay the special excise tax thereby shown to be due. Agricultural and horticultural associations specifically enumerated as exempt are held to be such associations as county fairs or like organizations, not themselves engaged in such pursuits, but which, by means of awards, etc., are intended to encourage better production, and no part of whose net income inures to the benefit of any private stockholder or individual. (T. D. 1737.)

29. Fruit growers' associations whose purpose is to promote the mutual benefit of their members in growing, harvesting, and marketing their products, and which are not organized for profit and have no capital stock represented by shares, and whose income is derived wholly from membership fees, dues, and assessments to meet necessary expenses, are not liable.

30. Corporations engaged in growing fruits, vegetables, and like products for profit, and distributing such profits among their members on the basis of the capital invested, are liable and must make returns and pay taxes, if any are found to be due. (T. D. 1737.)

31. Associations or trusts voluntarily formed by parties at interest and not organized "under

the laws of the United States or of any State or Territory thereof, or of the laws applicable to the District of Columbia or Alaska," are not corporations within the meaning or intent of the law, and are not liable. (See *Eliot v. Freeman*, 220 U. S. 178.)

32. National banks do not come within any of the exemptions named in the act.

33. "Agricultural organizations" held not to come within the statutory exemption, unless their chief object is the promotion or advancement of agricultural interest, and no part of the net income inures to the benefit of their stockholders.

34. Mutual Hail Association regarded as an insurance company and not as an agricultural association, and therefore liable to tax.

35. Exemption in favor of fraternal beneficiary associations does not apply to mutual fire insurance companies.

36. Limited partnership, if organized for profit and having a capital stock represented by shares, although no "certificates of stock" are issued, is liable to the tax imposed. (28 Atty. Gen. Op. 189.)

37. Interest received on Government bonds to be included in gross income. (28 Atty. Gen. Op. 138.)

38. Returns should be signed and verified



by two of the officers designated in the law. Signing of one person holding two such offices not permitted. Agents for foreign steamship companies may sign the required returns, if so authorized by their companies.

39. Returns not required to have corporate seal affixed.

40. Returns filed with deputy collector regarded as having been filed with collector.

41. No form of protest prescribed. Any form of protest sufficient if filed before payment of tax. Right of protest not to be denied.

#### INVENTORIES, ACCOUNTS, ETC.

42. Where an inventory or its equivalent was not taken at the close of the year 1908, a supplemental statement showing such inventory approximately must be submitted with the return on the regular form. Such supplemental statement shall be verified under oath by the treasurer or principal financial officer submitting the same. (T. D. 1578.)

43. Profits realized on sale of real estate during the year, also increase in value of unsold property, if taken up on the books of the corporation, to be included in income.

44. Cost of manufactured articles, or articles in process of manufacture, held to include

original cost of materials used, plus cost of labor, etc.

45. Mortgaged real estate should be inventoried at its full value and amount of mortgage reported as indebtedness.

46. Receipts from sale of patent rights to be included in income.

47. No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations, etc., must be so recorded that each and every item therein set forth may be readily verified by an examination of the books and accounts where such examination is deemed necessary.

48. Any increase in the value of the capital assets, as determined by a physical revaluation and taken cognizance of by the corporation in book entries, is gain and must be accounted for as income for the year in which such increase is so recognized and recorded.

### DEDUCTIONS, EXPENSES, ETC.

49. It is immaterial whether the deductions are evidenced by actual disbursements in cash or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books as

to constitute a liability against the assets of the corporation, etc., making the return.

50. Mortgage indebtedness on real estate, if assumed by the corporation acquiring such real estate, to be included in the indebtedness of the corporation. But if not so assumed and remains only as a lien on the property, interest paid thereon may be deducted as a charge "made as a condition to the continued use or possession of the property." (See 28 Atty. Gen. Op. 198; 25 Treas. Decis. (1865); 19 Treas. Decis. (1595); Wall St. Journ. Art. VII.)

51. Cost of erecting building, if included in lease under which property is held by company, is a proper deduction, to be prorated according to time fixed by lease.

52. General expenses, such as coal, ship stores, etc., of foreign steamship companies, to be prorated as provided in act for interest deductions.

53. Amount received by nursery companies from sales of trees, etc., less amount expended for seedlings and young trees, to be included in gross income. Amount expended for labor, salesmen, etc., to be deducted as expenses.

54. Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books.

55. Sales of stock and bonds are regarded

as sales of capital assets and should be so accounted for. (Art. 2, regs. 31.) But proceeds derived from sale of bonds used in defraying ordinary and necessary expenses are a proper deduction in determining the company's net income.

56. Stock issued in payment of property purchased represents capital investments, and notes issued during the year represent indebtedness. Corporate funds applied to the payment of outstanding notes not a proper deduction in ascertaining net income.

57. Amounts expended in additions and betterments which constitute an increase in capital investment not a proper deduction.

58. Dividends received by corporations on stock of other corporations whose net income does not exceed \$5,000 is nevertheless a proper deduction under the law. (28 Atty. Gen. Op. 140.) But see pp. 8, 125.

59. Dividends received on stock of foreign corporations not subject to tax not a proper deduction.

60. Dividends paid employees in lieu of wages not proper deduction as expenses.

61. Royalties on patent rights to be reported as income. Allowance for depreciation of patents expiring during the year, however, will be allowed.

62. In the case of lands bought prior to January 1, 1909, and sold during any subsequent year, the profits arising from such sale, if no accounting of increased value of land was made in returns for previous years, should be prorated in accordance with the number of years the land was held by the corporation and the number of years the law was in effect.

63. Banks paying taxes assessed against their stockholders because of their ownership of the shares of stock issued by such banks can not deduct the amount of tax so paid in making their return for the special excise tax on corporations. (See 22 Treas. Decis. 1763 and 1771.)

64. Amounts paid for pensions to retired employees, or to their families or others dependent upon them, or on account of injuries received by employees, are proper deductions as "ordinary and necessary expenses": gifts or gratuities to employees in the service of a corporation are not properly deductible in ascertaining net income. Donations made for purposes connected with the operation of the property when limited to charitable institutions, hospitals, or educational institutions, conducted for the benefit of its employees, or their dependents, shall be proper as a deduction under the same head.



65. Where allowances on account of salaries are deemed excessive and for the purpose of evading the tax due, investigation will be made, and if the facts warrant prosecution will follow.

66. Interest paid on time deposits and deposits subject to check constitutes a proper deduction from the amount of gross income during the year.

67. Interest on portions of bonded or other indebtedness bearing different rates of interest may be deducted from gross income during the year, provided the aggregate amount of such indebtedness does not exceed the paid-up capital stock of the corporation.

68. Interest paid during the year on notes given prior to January 1, 1909, to be prorated. But interest on notes given in 1909, and payable subsequent to December, 1909, unless charged on the company's books, is not a proper deduction from the income of that year.

69. Interest, taxes, or other items allowable as deductions, accruing prior to January 1, 1909, are not allowable deductions from the gross income of years subsequent thereto.

70. Unearned premiums set aside by insurance companies as reserve not to be included as income until earned, unless the same shall be entered on the ledger as income during the year in which received.

71. Funds set aside by company for insuring their own property not a proper deduction.

72. As the tax imposed is measured by and is not a tax upon the net receipts of corporations, etc., interest received during the year on government bonds is not a proper deduction from such income in determining the amount of tax due. (28 Atty. Gen. Op. 138.)

73. State, county, or municipal taxes paid during the year a proper deduction in ascertaining the net income of corporations.

74. Import duties or taxes if included in arriving at cost of goods are not deductible under the head of taxes paid during the year.

75. Bad debts, if so charged off the company's books during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

76. The net addition to reserves of insurance companies, required by law, may be based on the highest amount of reserve required by any State in which the insurance company does business. (T. D. 1727.)

77. Reserves for taxes can not be allowed, as the law specifically provides that only such sums as *are paid* within the year for taxes can be deducted. (T. D. 1727.)

78. Where a corporation or insurance company holds bonds which were purchased at a

rate above par, and a proportionate deduction of the value of such bonds is made on its books each year so that the book value shall be the redemption value of the bonds when they become due and payable, the return of annual net income may show the depreciation on account of amortization of such bonds. (T. D. 1727.)

79. Dividends declared by insurance companies are not deductible from gross income under the guise of rebates or otherwise, and such dividends when applied to the payment of renewal premiums, or to shorten the endowment or premium-paying period, or applied to purchase paid-up additions and annuities, must be considered and accounted for as income.

80. Railroad or other corporations which have leased their properties in consideration of a rental equivalent to a certain rate of interest on its outstanding capital stock and the interest on the bonded indebtedness, and such rental is paid by the lessee directly to the stock and bond holders, should, nevertheless, make a return of annual net income showing the rental so paid as having been received by the corporation. (See p. 108.)

81. Salaries paid to an officer who is a stockholder, to constitute an allowable deduction, must be a reasonable and fair compensation

for the services rendered, regardless of the amount of stock which such officer may hold, and must have been authorized by the board of directors and made a matter of record on the minute books of the corporation.

82. "Good will" represents the value attached to a business over and above the value of the physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed.

### DEPRECIATION.

83. Depreciation to be an allowable deduction in the return of annual net income of a corporation must be charged off on the ledger of the corporation, so as to show a reduction in the capital assets of the corporation to the extent of the depreciation claimed.

✓ 84. Deduction on account of depreciation of property must be based on lifetime of property, its cost, value, and use, and must be evidenced by a ledger entry and a like reduction in the plant and property account with respect to which depreciation is claimed.

85. In the case of corporations owning stocks and bonds or other securities, if an annual adjustment of the value of such securities is made and the adjusted values made a



matter of ledger entry, the appreciation of such securities as so entered must be accounted for as income, and the depreciation may be deducted from gross income. If no annual adjustment is made, and the securities are carried from year to year as a permanent investment, there will be neither gain nor loss, as to the principal of such securities, until the same shall have been disposed of, when the gain or loss as compared with the original cost shall be prorated, and the amount of such gain or loss apportioned to the years since the incidence of the tax, to wit, January 1, 1909, shall be added to or deducted from the gross income of the year in which the securities were disposed of. But see pp. 8, 125.

86. Where increase or decrease during the year in the value of real estate acquired in previous years, sold or held for sale, is taken up on the books and the rate can not be accurately determined with respect to individual years, such increase or decrease may be prorated as provided by regulations in cases of sale of capital assets.

87. Premiums on stocks and bonds arbitrarily charged off on the books of a corporation do not constitute a proper deduction on account of depreciation, unless there shall have been an actual shrinkage in value of such



stocks and bonds to the extent of the deduction claimed during the year for which the return is made.

88. Net income on uncompleted contracts may be estimated on the basis of the percentage of the work completed as compared with the contract price of the whole work.

89. Cost of drilling new wells by oil corporations is considered betterments and additions to the capital assets of the corporation. The expense of drilling dry wells may, however, be charged to profit and loss.

90. Discounts, other than bank discounts on notes executed by a corporation, should be segregated from the interest item on the return, and should be included under expenses, item 4.

91. The mere removal of timber by cutting from timber lands, unless the timber is otherwise disposed of through sales or plant operations, is considered simply a change in form of assets. If said timber is disposed of through sales or otherwise it is to be accounted for in accordance with regulations governing disposition of capital and other assets.

92. Deduction on account of depreciation of property must be based on lifetime of property, its cost, value, and use. (See 84 above.)

93. Loss due to voluntary removal of buildings, etc., incident to improvements is either

a proper charge to the cost of the new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation.

94. Depreciation of company's stock a loss to the stockholders, but not a loss to the company issuing the same, and therefore not a proper deduction.

### PUBLICITY.

95. A person who as trustee or in any other fiduciary relation has the ownership or possessory right to stock in a corporation is a stockholder in such corporation within the equity of the rule set down in Treasury Decision No. 1665, governing the publicity of returns. See p. 174.

### DEPRECIATION IN MINERALS, OILS, ETC.

96. In case of corporations whose business consists in part or wholly of mining, producing, and disposing of deposits of nature (ores, coals, gas, petroleum, and sundry minerals), the conduct of such business will be understood to

comprehend two classes of gains or losses, viz.:

(a) The gain or loss resulting from the sale of capital assets, i. e., either the increment, or the loss, arising through possessing over a period of time the investment in the same.

(b) The trading or commercial gain attached to the conduct of the industry, the employment of working capital, the effort and risk involved.

97. In the ascertainment of net income deduction will be allowed for depreciation arising from exhaustion of deposits of ore, mineral, etc., and for depreciation and obsolescence of improvements, in accordance with general regulations respecting depreciation allowances, on the basis of the original capital investment cost of the properties concerned to the company reporting.

98. A further deduction will also be allowed, through not including the same at all in the item of gross income (Item 3, Form 637), for the unearned increment represented in such properties as at January 1, 1909, which will be determined in general as follows:

99. An estimate should be made as of January 1, 1909, of the fair market value at that date of the minerals, etc., in deposit. This estimate should be formed on the basis

of the disposal value of the minerals *in total* and exclusive of value of improvements and development work. This valuation should also be reduced to a unit value — per ton, barrel, etc.

NOTE. — Values as aforesaid should not be estimated on the basis of the assumed salable value of the output under current operative conditions, less the actual cost of production, because, as hereinbefore stated, the selling price under such conditions comprehends a profit both for carrying the investment in minerals, improvements, and working capital, and for conducting operations in respect of production and disposal of product. The value to be determined as stated must be on the basis of the salable value of the entire deposit of the aggregate units of minerals considered *en bloc* if disposed of in that form. Nor must such valuation comprehend any speculative value which might attach to a sale of the minerals *en bloc*, i. e., a value which might be obtained on the ground that the future would develop a much greater reserve of mineral deposits than were believed to exist at the time estimate as of January 1, 1909, was formed. Any value of this latter character would attach obviously to such additional reserves when developed in future.

100. The unit value as of January 1, 1909, ascertained as above outlined, would indicate the value to be attached at that date to the capital assets disposed of during any calendar year succeeding, and should be used in determining the unearned increment at January 1, 1909, which may be excluded entirely from the

item of gross income, as before explained, in following manner, viz.:

Value at Jan. 1, 1909, determined in manner outlined, of minerals, etc., which may be removed and disposed of in any year subsequent thereto . . . . .	\$00.00
Less the following:	
(a) Proportion of depreciation charge applying to exhaustion of minerals disposed of, ascertained as first explained herein on basis of original cost . . . . .	00.00
(b) Royalty paid, if any, on minerals disposed of . . . . .	00.00
Balance, being unearned increment at Jan. 1, 1909, to be excluded from gross-income item . . . . .	00.00

101. The precise detailed manner in which the estimate of value of minerals, etc., as at January 1, 1909, shall be formed, must naturally be determined upon by each corporation interested, but formal record of such estimates, together with all sustaining information, should be carefully filed so as to be readily accessible for reference. Values as stated, as determined at January 1, 1909, should be used in compilation in all subsequent years' excise-tax returns. The question as to whether it subsequently develops the property possessed a greater quantity of mineral, etc., reserve than was in the aggregate estimated as of January 1, 1909,



is immaterial. Any excess which may be developed will be considered as possessing the same value at January 1, 1909, as that which then may have been known to be in the property.

102. Each excise-tax return (Form 637) should be accompanied with memorandum setting forth the extent in amount of the exclusion made from the item gross income for unearned increment realized during the year, as above outlined.

103. As the amount to be deducted for depreciation (paragraph 2 preceding) is to be formed on basis of the estimated reserve of minerals, etc., it follows that if it develops such estimate is understated, the cost investment in the capital asset may be wholly extinguished before all mineral reserves are removed. When this is reached, further deductions for exhaustion of minerals should be discontinued, but in such event, it will be noted, the allowance for unearned increment which is to be excluded entirely from gross income will be correspondingly increased.

104. In case of corporations leasing mines and paying royalties on minerals, etc., removed, the royalties paid are to be treated as expenses and deducted in ascertaining net income, as provided in general regulations. Any leasehold investment which the operating corpora-

tion may have in such properties, either through a payment originally made for acquirement thereof or for improvements made upon the property, to be accounted for in accordance with regulations governing depreciation allowances and disposition of capital assets.

105. In respect to properties of the character in question which may be acquired by a corporation after January 1, 1909, a deduction will be allowed only as to depreciation arising from exhaustion based on original cost; no exclusion from gross income can be made for unearned increment, as profit arising in sale of such capital assets applies wholly to the period subsequent to January 1, 1909.

Modifications of note in item No. 99, and items 100, 101, and 103 of Treas. Decis. (1742), relative to claims for unearned increment in returns of annual net income of mining corporations are stated in 24 Treas. Decis. (1833).

No. 99. The note is amended so that it shall read:

NOTE. — Values, as aforesaid, should not be estimated on the basis of the assumed salable value of the output under current operative conditions, less the actual cost of production, because, as hereinbefore stated, the selling price under such conditions comprehends a profit both

for carrying the investment in coals, etc., improvements and working capital, and for conducting operations in respect of production and disposal of product. The value to be determined as stated must be on the basis of the *salable value en bloc* of the entire deposit of minerals and mineralized property owned, exclusive of improvements and development work, if the same were disposed of in that form.

No. 100 is amended to read:

The unit value as of January 1, 1909, ascertained as above outlined, would indicate the value to be attached at that date to the capital assets disposed of during any calendar year succeeding. The amount claimed as a deduction from gross income on account of unearned increment shall be shown separately in the deductions from gross income in the return of annual net income.

No. 101 is amended to read:

The precise detailed manner in which the estimate of value of minerals, etc., as at January 1, 1909, shall be formed, must naturally be determined by each corporation interested. Every corporation claiming and making a deduction for unearned increment, as provided in section 100 preceding, shall maintain an official book record of the properties owned by it in connection with which unearned increment is claimed, and which record shall show the general ledger or general balance sheet value

thereof, together with the estimated amount of appreciated value in such properties in excess of general balance sheet values, as of January 1, 1909, together with all evidence and information on basis of which such appreciated value was formed. This estimate must be formed on the lines and basis indicated in the "note," section 99, namely, the salable value of the entire deposit considered *en bloc*. This record should also present clearly and fully the transactions during each year in respect of quantities of minerals disposed of and for which deductions are made respectively for depreciation and unearned increment, together with the amount thereof. *No deduction for unearned increment will be allowed unless the aforesaid record is kept, nor unless the evidence as to the estimates of quantity of minerals in deposit and the valuation thereof are accepted by the department.* Values determined and recorded as of January 1, 1909, as aforesaid, should be used in the compilation of all subsequent years' excise tax returns.

In case it subsequently develops the property possesses a greater quantity of mineral, etc., reserve than was in the aggregate estimated as of January 1, 1909, only such an amount of aggregate value can be assigned to such excess mineral tonnage as of January 1, 1909, as it



was at said date estimated by the company attached to the property and was not assigned by it, as hereinbefore provided, to the special tonnage in the property.

No. 103 is amended to read:

As the amount to be deducted for depletion of deposits (Regulation No. 101) is to be formed on basis of the estimated reserve of minerals, etc., it follows that if it develops such estimate is understated, the cost investment and estimated unearned increment in the capital asset may be wholly extinguished before all mineral reserves are removed. When this is reached, further deductions for exhaustion of minerals should be discontinued.

Regulation to govern the ascertainment of the rate of depletion of deposits and the return of cash investment to corporations with respect to natural gas-producing properties may be found in 22 Treas. Decis. (1754). See (1675).

Regulation to govern the ascertainment of the rate of depletion of deposits and the return of cash investment to corporations with respect to petroleum-producing properties is given in 22 Treas. Decis. (1755).

In *United States v. Nipissing Mines Co.*, 202 Fed. Rep. 803, it was held that a mining corporation engaged in extracting ore from its



mines was entitled to an allowance for depreciation equal to the value in place of the ore extracted and disposed of during the year.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, that any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, that the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company, association or insurance company,

at such times and in such manner as the Secretary of the Treasury may prescribe.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000.

The first part of this sub-section is identical with "Sixth" of the act of 1909. The part beginning with "*Provided*" is taken from appropriation acts. See 36 U. S. Stats. at Large, 494. The provision beginning "*Provided further*" is new. The last part beginning with "If any of the corporations" is identical with the first part of "Eighth" in the act of 1909 except that in that act the penalty is "not less than one thousand dollars and not exceeding ten thousand dollars."

The executive order, together with regulations signed by the Secretary and approved by the President, relative to the inspection of

returns under the act of 1909, is given in 19 Treas. Decis. (1665), and is as follows:

“1. The return of every corporation shall be open to the inspection of the proper officers and employees of the Treasury Department. Where access to any return is desired by an officer or employee of any other department of the Government, an application for permission to inspect such return, setting out the reasons therefor, shall be made in writing, signed by the head of the executive department or other government establishment in which such officer or employee is employed, and transmitted to the Secretary of the Treasury. If, however, the return is desired to be used in any legal proceedings, or to be used in any manner by which any information contained in the return could be made public, or access to any return is desired by any official of any State or Territory of the United States, the application for permission to inspect such return shall be referred to the Attorney-General, and if recommended by him transmitted to the Secretary of the Treasury.

“2. The Secretary of the Treasury, at his discretion, upon application to him made, setting forth what constitutes a proper showing of cause, may permit inspection of the return of any corporation by any *bona fide* stockholder

in such corporation. The person desiring to inspect such return shall make application, in writing, to the Secretary of the Treasury, setting forth the reasons why he should be permitted to make such inspection, and shall attach to his application a certificate signed by the president, or other principal officer, of such corporation, countersigned by the secretary, under the corporate seal of the company, that he is a *bona fide* stockholder in said company. (Where this certificate cannot be secured, other evidence will be considered by the Secretary of the Treasury to determine the fact whether or not the applicant is a *bona fide* stockholder and therefore entitled to inspect the return made by such company.) The privilege of inspecting the return of any corporation is personal to the stockholders, and the permission granted by the Secretary cannot be delegated to any other person.

“3. The returns of the following corporations shall be open to the inspection of any person, upon written application to the Secretary of the Treasury, which application shall set forth briefly and succinctly all facts necessary to enable the Secretary to act upon the request:

“(a) The returns of all companies whose stock is listed upon any duly organized and recognized stock exchange within the United

States, for the purpose of having its shares dealt in by the public generally.

“(b) All corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale. In case of doubt as to whether any company falls within the classification above, the person desiring to see such return should make application, supported by advertisements, prospectus, or such other evidence as he may deem proper to establish the fact that the stock of such corporation is offered for general public sale.

“Returns can be seen only in the office of the Commissioner of Internal Revenue, in Washington, D. C. In no case shall any collector, or any other internal-revenue officer outside of the Treasury Department in Washington, permit to be seen any return or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return.

“No provision is made in the law for furnishing a copy of any return to any person, and no copy of any return will be furnished except to the corporation making the return, or its duly constituted attorney.”

The following are rulings and decisions under the act of 1909 as to refusal or neglect to make return and as to false or fraudulent returns:



Assessed taxes are held to be due and payable ten days after actual mailing of notice and demand. Form 17. 19 Treas. Decis. (1659). See U. S. Rev. Sts. § 3184.

If a bank receives the amount due but fails to turn the same over to the Collector to be placed to the credit of the U. S. Treasurer in time to avoid the liability to five per cent penalty as imposed by § 3184, U. S. Rev. Sts., holding the same eleven days, this is no reason why the penalty should not be demanded. 19 Treas. Decis. (1651).

No authority is vested in administrative officers to relieve corporations from the additional tax of fifty per cent. 20 Treas. Decis. (1701).

In *General Inspection Co. v. United States*, 24 Treas. Decis. (1850), judgment in favor of the United States for tax, five per cent penalty, interest and costs was affirmed. See 192 Fed. Rep. 223.

It is provided by the act of March 3, 1913, c. 120, that any corporation, etc., liable for any additional tax for neglect to file a return on or before March first of any year may within one year after passage of the act, or within one year after the date of notice of assessment where such notice is given after the passage of the act, "make application to the Commissioner of Internal Revenue for a refund of such additional

tax. And the Commissioner of Internal Revenue, with the advice and consent of the Solicitor of Internal Revenue, is hereby directed to remit, abate, or pay back all such additional taxes in excess of \$100 for any single year whenever in any case it appears to his satisfaction that the additional tax was assessed or imposed solely because of a neglect to make a return at the time or times specified in said act, and without any intention or design on the part of any officer of such corporation, etc., to hinder or delay the United States in the collection of the tax originally assessed."

"Claims for abatement or refunding under the provisions of the foregoing act shall be made on Forms 47 or 46, respectively, executed in the usual manner and filed with the collector of the district in which the claimant was assessed or paid its tax, to be by him entered on his record and certified to the Commissioner of Internal Revenue. Such claims should be accompanied by an affidavit of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, stating specifically that the neglect to make the annual return of the claimant at the time required by law was without any intention or design on the part of any officer of such claimant to hinder or delay the United States in the collection of the tax

originally assessed, and setting forth in detail the cause or causes which produced the delay in filing the said annual return in the time and manner prescribed by law." 24 Treas. Decis. (1838).

In a communication dated December 5, 1911, 21 Treas. Decis. (1740), the Commissioner says that, when proceedings are instituted, the office suggests a civil action for the penalty instead of proceeding by indictment in a criminal action. "The amount of the penalty is to be determined by the court after a verdict for the plaintiff within the limits stated."

The Commissioner states in a communication dated May 1, 1913, 24 Treas. Decis. (1848):

"It is not the policy of this office to involve citizens in litigation for this offence without first giving them an opportunity to settle their controversies with the Government by compromise. However, where the delinquent corporation has been notified of its privilege to make an offer in compromise, but refuses or neglects, and has sufficient assets from which a judgment would be collectible, there is no option except to report it to the United States attorney, as the law requires. In reporting a case to the United States attorney, you will please give the location of the office of the corporation and the names and addresses of its officers, with your opinion

as to there being sufficient assets to make a judgment collectible. It is suggested that before recommending prosecution a deputy collector should be instructed to call upon the corporation to ascertain if it is now engaged in business, and the name of the party to be served with papers if suit is brought, and that it does not propose to make any overtures for settlement by way of compromise, or that the revenue agent of the division be requested to make the necessary investigation."

Instructions relative to offers in compromise are given in 20 Treas. Decis. (1698). Offers of less than \$10 are too trivial. Same decision. Instructions as to compromise are also given in 20 Treas. Decis. (1692). The provisions as to the Commissioner of Internal Revenue, with the consent of the Secretary of the Treasury, compromising civil or criminal cases under the internal revenue laws, are found in U. S. Rev. Sts. § 3229. See also § 3469; Foster & Abbot, 228.

Where a civil action is brought to recover a penalty, the verdict must fix the amount, after which the only remedy (other than appeal) is an application for a compromise under U. S. Rev. Sts. §§ 3229, 3469. *United States v. Acorn Roofing Co.*, 204 Fed. Rep. 157.

In a letter in 24 Treas. Decis. (1852), ad-



dressed to a Collector of Internal Revenue, and dated May 29, 1913, the Commissioner says, "Relative to delinquent corporations in your district, which went out of existence during 1912, leaving no assets, after having transacted business during a portion of said year, you are advised that the former officers of such corporations can not be held individually liable for the penalty prescribed by law, nor are the individual funds or assets of stockholders available. If, however, a corporation has gone out of business, leaving assets which have been distributed among the stockholders, such assets are held to be available for collection of the tax (T. D. 1615), but not for the penalty. In this connection, your attention is called to T. D. 1710 and T. D. 1848, containing general instructions to collectors, in accordance with which you may, without asking for instructions from this office, eliminate from your delinquent list corporations which have done no business at all during the preceding calendar year, or which have gone out of business leaving no assets, or which, if still in business, have no assets from which judgment could be collected, or which, with their officers, can not be located after due investigation." See 20 Treas. Decis. (1673).

The penalty of from \$1,000 to \$10,000 for



failure to make return under the act of 1909 was held constitutional. *United States v. Surprise*, 25 Treas. Decis. (1864). The acceptance of a return by the Commissioner was held not a waiver of the penalty. Same case. Penalties for delay are a necessary incident to procuring revenue and should receive an impartial, if not a sympathetic, interpretation. Same case.

#### MEANING OF “STATE” OR “UNITED STATES”

H. That the word “State” or “United States” when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

PENALTY FOR REVENUE OFFICERS DISCLOSING OPERATIONS, ETC., OF MANUFACTURERS, INCOME RETURNS, ETC. — CANVASS OF DISTRICTS FOR OBJECTS OF TAXATION — ANNUAL RETURNS OF PERSONS, ETC., LIABLE TO TAX — WHEN COLLECTOR OR DEPUTY MAY MAKE RETURN — NOTICE TO MAKE RETURN — PRODUCTION OF BOOKS OF ACCOUNT — PENALTIES.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States, to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufac-

turer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditure appearing in any income return; and any offence against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter,

of holding any office under the Government.

SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy

collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, that if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay



any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, that in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return

required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof.

The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

SEC. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and ob-

jects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in

which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held *prima facie* good and sufficient for all legal purposes.

§ 3167. This is identical with the act of August 27, 1894, c. 349, § 34, 28 U. S. Stats. at Large, 557, which enlarged this section as it appeared in the U. S. Rev. Sts. See act of February 8, 1875, c. 36, § 23, 18 Stats. at Large, 307.

§ 3172. This is identical with the act of August 27, 1894, c. 349, § 34, 28 U. S. Stats. at Large, 558, which changed this section as it appeared in the U. S. Sts. by substituting "any internal-revenue tax" for "a special tax."

§ 3173. This is identical with the act of August 27, 1894, c. 349, § 34, 28 U. S. Stats. at Large, 558, which enlarged this section as it appeared in the U. S. Rev. Sts. as amended by act of March 1, 1879, c. 125, § 3, 20 U. S. Stats. at Large, 330.

§ 3176. This is identical with the act of August 27, 1894, c. 349, § 34, 28 U. S. Stats. at Large, 559, which enlarged this section as it appeared in the U. S. Rev. Sts. as amended by



the act of March 1, 1879, c. 125, § 3, 20 U. S. Stats. at Large, 331.

The fifty per cent to be added to the tax is a penalty, and not a tax. 17 A. G. Op. 433. The penalty of one hundred per cent is constitutional. *Doll v. Evans*, 9 Phila. 364. The transmission of the lists to the collector apparently terminates the power to add to this penalty. 11 Atty. Gen. Op. 280. Upon the right of secrecy, see § 19 of act of June 30, 1864; 1 Int. Rev. Rec. 4, 6, 19 (column 3), 20; 4 Harvard Law Rev. 193.

Disclosures or admissions, compelled from taxpayers required to testify or make returns as to property, cannot be used as evidence in any Federal court in a criminal or quasi-criminal prosecution. *Re Phillips*, 10 Int. Rev. Rec. 107; *Landram v. United States*, 16 Ct. Cl. 74, 85; *Re Strouse*, 1 Sawyer, 605; *Re Lippman*, 3 Ben. 95; *United States v. Fordyce*, 13 Int. Rev. Rec. 77.

Under early laws the examination of taxpayers and their books was not infrequent. In the act of 1894, § 29, it was provided that, in the case of the refusal to make a return or of the rendering a wilfully false return, the collector or deputy was to make the list "according to the best information he could obtain, by the examination of such person, or any other evi-

dence," etc. In the present law it is provided both in the case of individuals and corporations that the Commissioner of Internal Revenue shall "at any time within three years after said return is due, make a return upon information obtained as provided for in this section, or by existing law." See pp. 189, 195. This section (3173) is identical in both acts. The Federal Corporation law of 1909 contains in section "Fourth" a provision, which does not appear in the present act, authorizing the Commissioner of Internal Revenue to examine any books and papers and require the attendance of any officer or employee of a corporation, etc. That the provisions of this section (3173) are constitutional would appear by the decision in *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, sustaining the constitutionality of a very similar provision of the Interstate Commerce law.

"In *Boyd v. United States*, 116 U. S. 616, the fifth section of the act of June 22, 1874, 18 St. 186, which authorized a court of the United States in revenue cases, on motion of the District Attorney, to require the defendant or the claimant to produce in court his private books, invoices and papers, or else that the allegations of the attorney as to their contents should be taken as confessed, was held unconstitutional

and void as applied to an action for penalties or to establish a forfeiture of the party's goods, because repugnant to the Fourth and Fifth Amendments to the Constitution." *Fairbank v. United States*, 181 U. S. 283, 302.

As proceedings may be taken under this section (3173), its constitutionality not having been actually tested, we give from 19 *Treas. Decis.* (1617) the Commissioner's instructions approved by the Secretary of the Treasury relative to action under the repealed provisions of the act of 1909:

"On receiving from collectors, or from this office, a list of corporations, etc., which have failed to file the required returns, or which have filed defective or unsatisfactory returns, agents will at once proceed to make the investigation provided for in the fourth paragraph of said section 38. They will in each case, after calling the attention of the proper officer of the corporation to the provisions of the statute, request the production of such books and papers bearing upon the matters required to be included in the return of such corporation, as may be found necessary in making the examination here directed.

"In most cases the errors in the returns rendered are probably due to a misapprehension on the part of the officers of the corporation

as to the requirements of the law and regulations respecting the preparation of such returns. . . . In conducting their examination the agents will, except in glaring cases of misrepresentation, proceed on the assumption that all errors in the returns rendered are unintentional; and they will, so far as possible, make their examination in such manner as not to interfere with the company's business, either as to the use of its books or in the general conduct of its affairs. Contentions with officers, employees or representatives of corporations are to be carefully avoided and no action that may cause friction, that is not necessary in the proper performance of their duties, must be indulged in by officers making these examinations.

"Ordinarily no very extended examination of the company's books will be necessary, as the verification of the particular items to which attention has been called will be sufficient. Where, however, a thorough examination is found to be necessary, and the accounts are so kept as to involve much labor in their examination, the agent may assign two assistants for this purpose.

"Where discrepancies between the company's books and the return made are discovered, the officers of the company should be given full



opportunity to explain the same, and to furnish, if so desired, a sworn statement in reference thereto. In such cases the agent will, if deemed necessary, require the attendance of any officer or employee of the company, and there examine such officer or employee respecting the matter under investigation, as provided in said section 38. The witnesses in such cases should be duly sworn by the agent, as specially provided in said section 38, and in case of refusal of any such officer or employee to testify, or in case of refusal to produce the books or papers called for, the agent will at once report the fact to this office.

“A separate report of the investigation of each case should be made, and where an additional tax is found to be due a copy of such report should be furnished the collector of the district.

“The attention of agents and their assistants is specially called to paragraph 7 of said section 38, making it unlawful for any officer or employee of the United States to divulge or make known, in any manner not provided by law, any information obtained from any document received, evidence taken, or report made under the provisions of that section.”



## RECEIPT OF COLLECTOR OF INTERNAL REVENUE FOR TAXES.

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify

him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

#### JURISDICTION OF THE UNITED STATES DISTRICT COURTS.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

CERTAIN ADMINISTRATIVE, ETC. LAWS TO  
APPLY.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

PORTO RICO AND THE PHILIPPINE ISLANDS.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: *Provided*, that the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the gen-

eral governments thereof, respectively: *And provided further*, that the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further*, that nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico, and the Philippine Islands or the political subdivisions thereof.

[N. This sub-section provides for an appropriation to carry the law into effect.]

A part of S of Section IV of the present tariff act provides as follows:

*Provided further*, that all excise taxes upon corporations imposed by section thirty-eight, act of 1909, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve,

shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: *And provided further*, that a special excise tax with respect to the carrying on or doing of business, equivalent to one per cent upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies, of the character described in section thirty-eight of the act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of sub-section G of section two of this act: *Provided further*,



that the provisions of said section thirty-eight of the act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this act; but the repeal of existing laws or modifications thereof embraced in this act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications

had not been made. Any offences committed and all penalties or forfeitures or liabilities incurred prior to the passage of this act under any statute embraced in or changed, modified, or repealed by this act may be prosecuted or punished in the same manner and with the same effect as if this act had not been passed.

#### CONSTRUCTION IN CASE OF INVALIDITY OF ANY CLAUSE, ETC.

T. and U., which follow, are from Section IV of the present tariff act.

T. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

U. That unless otherwise herein specially provided, this act shall take effect on the day following its passage.

### RECENT POINTS.

The following points or contentions have recently come to the attention of the writer:

Some contend that the deductions in the case of single and married people, in the case of the normal tax, apply as well to the additional tax.

It is urged that the salaries of Congressmen are subject to the tax, inasmuch as the provision exempting officers and employees of a State or any political subdivision thereof is followed by the exception "when such compensation is paid by the United States Government," the contention being that Congressmen are officers of the States they represent, although their salaries are paid by the National Government. See p. 38.

It is stated in the New York Sun, of Oct. 24, 1913, that Mr. Walker, an attorney thoroughly versed in the law of corporate enterprises, denies the contention that the increase in the value of the property of a person or corporation during a year constitutes taxable income for that year as being "accrued," on the ground

that "derived" income or "received" income, not "accrued" income, is that stated in the law as taxable; hence professional men and others receiving fees are not to return as fees the amount earned, though unpaid; and the same rule applies to the income of corporations. Mr. Walker denies the contention that debts can be charged off against income as a deduction only after legal proceedings by the creditor to recover have proved the debts worthless, as the law provides that the taxpayer's satisfaction of the debt's worthlessness is sufficient. Mr. Walker denies the contention that corporations have to pay the tax on interest received from Government, State and Municipal bonds, which are tax free, in the hands of individuals. He also holds that the multiple taxation of income of corporations, which are holding companies, is directed against such companies, though no such purpose is stated in the bill.

It is maintained that the proviso to C as to one deduction for husband and wife living together modifies what goes before and is after the nature of a joker. See p. 57.

## TREASURY REGULATIONS AS TO COLLECTION AT THE SOURCE ON BONDS, ETC.

The following is a brief statement of the regulations, which are given in full on pp. 214 *et seq.* It is provided:

That the normal tax of one per cent shall be deducted at "the source," beginning Nov. 1, 1913, from income payable to (a) every citizen, residing here or abroad, and to (b) every person residing here, though not a citizen, derived from interest, although less than \$3,000, upon bonds and other obligations enumerated, except the interest upon obligations of the United States or its possessions, or a State or any political subdivision thereof.

That the term "Debtor" means all corporations, joint stock companies or associations, and insurance companies.

That to collect the tax on coupons and registered interest payable in the United States, the source shall be the debtor or its paying agent, and no other bank, etc., taking coupons, etc., for collection shall withhold the tax, provided that coupons or orders for registered interest are accompanied by certificates of ownership signed by the owners. A separate certificate shall be made out by each owner for the coupons



or interest orders for each separate issue of bonds, etc., of each debtor.

That, if the coupons or interest orders are not accompanied by certificates, the final bank, etc., receiving the coupons, etc., for collection, or otherwise, shall withhold the tax and shall attach its own certificate, giving the name and address of the owner or the person presenting the same, if the owner is not known, with a description of the coupons, etc.; also setting forth that they are withholding the tax; whereupon the debtor shall not again withhold the tax, but shall give the government the certificate of such bank, etc. Corporations receiving from the owner coupons, etc., and taking the above certificates should require those tendering the coupons, etc., to establish their identity.

That a debtor, in case of registered bonds as to principal and interest, shall deduct the one per cent from accruing interest before sending checks to registered owners or paying interest upon interest orders signed by the registered holders until there shall be filed with the debtor or its fiscal agent (not later than 30 days prior to March 1), through whom said interest is customarily paid, certificates claiming exemption, executed as follows (1) by a resident, the bona fide owner of the registered

obligations, claiming exemption under Par. C Sect. 2, of the act; (2) by corporations, etc., organized in the United States, or organizations, etc., either taxable or exempt, as provided in Par. G (a) of the act; (3) by a bona fide resident of a foreign country, claiming exemption.

That a debtor may appoint fiscal agents upon filing with the collector for its district a notice of the appointment.

That, if the owners of the bonds are residents of the United States, the certificate shall accompany the bonds, or, as to the interest on registered bonds, shall be filed with the payer, and such certificates shall state all the facts as in the form on p. 219.

That, in the case of coupons of bonds and interest payable, etc., to residents of the United States, the debtor or its fiscal agents shall withhold the tax, except as to exemption claimed in the certificate; and where the interest is registered the same form shall be used where exemptions are claimed, except that it shall be filed with the debtor at least five days before the due date of the interest.

That these certificates must be signed as directed, and that agents, trustees, etc., may sign for those they represent.

That, if corporations, etc., of the United

States, or organizations, etc., taxable or exempt, as provided in Par. G (a) of the act, own bonds, the debtor is not to withhold the tax, provided coupons, etc., are accompanied by a certificate, as in the form on p. 221. And interest coupons, etc., not accompanied by certificates, the form given on p. 223 shall be executed by the bank, etc.

That the debtors, etc., shall deliver all certificates, etc., to the collector for the district on or before the 20th of the month succeeding that in which the certificates were received by them.

That the tax shall not be withheld on coupons or interest due before March 1, 1913.

That all parties collecting coupons, checks, bills of exchange, etc., for or in payment of interest on foreign bonds, etc., and for dividends of foreign corporations, etc., must obtain a license from the Commissioner of Internal Revenue, and may be required to give bond; that the licensee shall withhold the tax, making indorsement as provided, which shall be sufficient to relieve subsequent holders, and, if the indorsement is impracticable, a statement bearing the indorsement; that such licensee shall file with the collector of the district a list of names and addresses, not later than the 20th of the month next succeeding the receipt of the items; that, if the coupons, etc., are pre-

sented by an individual claiming deduction under Par. C, Sect. 2, of the act, such individual shall have the deduction, upon signing on the form or coupons payable here; or, if such items are presented by corporations, etc., organized here, the form of certificate prescribed shall be used; that in both instances the licensee shall retain the certificates for delivery with the lists aforesaid to the collector, not later than the 20th of the month next succeeding that in which the items were received, and shall attach to the coupons, etc., a prescribed statement sufficient to relieve subsequent holders; that the interest upon foreign bonds, even though the coupons are payable here, are included in those provisions; that persons licensed shall keep correct records open to the inspection of internal revenue officers; that penalties are imposed for failure to comply with regulations and for false statements; that licenses are good until revoked; that application should be made to collectors, and may be issued without cost, upon the filing of a bond; that all applying shall register their names and addresses and state their business, and such application with bond, when approved, shall be a sufficient compliance with law until Feb. 1, 1914, without incurring penalties.

That in the case of partnerships, the coupons,



etc., shall be accompanied by a certificate signed in the firm's name by a member or by each member, and the tax shall be withheld by the debtor. The form is given on p. 231. Any member entitled to a deduction of his pro rata share of the tax withheld at the source may claim the same when making his individual income tax return.

That the tax will not be deducted in the case of bona fide owners, citizens of and residing in foreign countries, provided such interest coupons, etc., shall be accompanied by a certificate in the form given on p. 234; and unless such proof of foreign ownership is given, the tax shall be deducted.

That on Nov. 1, 1913, and for fifteen days thereafter, coupons need not be accompanied by certificates already described, provided they are accompanied by a temporary certificate in the form given on p. 236; that on or before Feb. 1, 1914, certificates of ownership of bonds on which was collected interest referred to in the temporary certificates may be delivered to the debtor, who may return any sum withheld to which the owner may be entitled; and any temporary certificates, for which certificates of ownership shall not have been substituted, shall by March 1, 1914, be delivered to the collector.



That specific directions are given as to size, etc., of certificates and as to paper to be used, and the parties first receiving coupons, etc., shall write or stamp his or its name and address and the date on the back of the certificates.

Other regulations will soon be issued and may be obtained of the collector of internal revenue or of one's banker.

## REGULATIONS

REGARDING THE DEDUCTION OF THE INCOME TAX AT THE SOURCE ON INTEREST MATURING ON BONDS, NOTES AND OTHER SIMILAR OBLIGATIONS OF CORPORATIONS, JOINT STOCK COMPANIES OR ASSOCIATIONS, AND INSURANCE COMPANIES, UNDER THE PROVISIONS OF SECTION II OF THE ACT OF OCTOBER 3, 1913:

### TAX TO BE DEDUCTED AT SOURCE

Under the income tax law, enacted October 3, 1913, a tax of 1 per cent, designated in the law as the *normal* tax, shall be deducted at "the source," beginning November 1, 1913, from all income accruing and payable to (A) every citizen of the United States, whether residing at home or abroad, and to (B) every person [residing in the United States, though not a citizen thereof, which may be derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations, including equipment trust agreements and receivers' certificates of corporations, joint stock companies or associations, and insurance com-

panies, although such interest does not amount to \$3,000; excepting only the interest upon the obligations of the United States or its possessions, or a State or any political subdivision thereof. The term "Debtor," as hereinafter used, shall be construed to cover all corporations, joint stock companies or associations, and insurance companies.

#### WHEN TAX SHALL BE WITHHELD BY DEBTOR

For the purpose of collecting this tax on all coupons and registered interest originating or payable in the United States, the source shall be the debtor (or its paying agent in the United States) which shall deduct the tax when same is to be withheld; and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon; provided that all such coupons, or orders for registered interest, are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matures. These certificates shall be in the forms hereinafter prescribed, and a separate certificate shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations of each debtor.

WHEN TAX SHALL BE WITHHELD BY FIRST COL-  
LECTING AGENCY

If, however, the coupons or interest orders are not accompanied by certificates as prescribed above, the first bank, trust company, banking firm, or individual or collecting agency receiving the coupons or interest orders for collection, or otherwise, shall deduct and withhold the tax, and shall attach to such coupons or interest orders its own certificate, giving the name and address of the owner of, or the person presenting such coupons or interest orders if the owner is not known, with a description of the coupons or interest orders; also setting forth the fact, that they are withholding the tax upon them; whereupon the debtor shall not again withhold the tax on said coupons or interest orders, but in lieu thereof shall deliver to the Government the certificate of such bank, trust company, etc., which is withholding such tax money.

Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest, and to whom the certificates above provided for are delivered, should require the persons tendering such coupons or orders for registered interest to satisfactorily establish their identity.

## PAYMENT OF REGISTERED INTEREST BY DEBTORS

A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of one per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds until there shall be filed with said debtor or its fiscal agent (and not later than thirty (30) days prior to March 1) through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed as follows:

By a citizen or resident of the United States, the *bona fide* owner of the registered obligations, who may claim exemption under Paragraph C, Section 2 of the Federal Income Tax Law; or

By corporations, joint stock companies, associations, or insurance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in Paragraph G, Subdivision A, of the act; or

By a *bona fide* resident and citizen of a foreign country, claiming exemption as such.



## DESIGNATION OF FISCAL AGENCIES

The "debtor" may appoint paying or fiscal agents to act for it in matters pertaining to the collection of this tax upon filing with the collector of internal revenue for its district a proper notice of the appointment of such agent or agents.

## CERTIFICATES CLAIMING EXEMPTION

If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or with respect to the interest on registered bonds, shall be filed with payer of said interest; and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds, and the full name and address of the owners; and shall also state whether they claim or do not then claim exemption from taxation at the source provided for by Paragraph C of Section 2 of the Federal Income Tax Law, (\$3,000) and under certain conditions (\$4,000), as to the income represented by such coupons or interest.

The certificate shall also show the amount, if any, of exemption claimed and the date of signature.

The form of certificate to be used for this purpose shall be substantially as follows:

FORM OF CERTIFICATE TO BE PRESENTED WITH  
COUPONS OR INTEREST ORDERS STATING  
WHETHER OR NOT EXEMPTION IS CLAIMED  
UNDER PARAGRAPH C, SECTION 2, OF THE  
FEDERAL INCOME TAX LAW

I do solemnly declare that I,.....  
a citizen or resident of the United States and  
residing at....., am the owner of  
\$..... bonds of the denominations of  
\$..... each, Nos. ...., of the .....  
(give name of debtor,) known as .....  
.....bonds, (de-  
scribe the particular issue of bonds,) from which  
were detached the accompanying coupons, due  
..... 191.., amounting to \$.....  
or upon which there matured.....  
191.., \$..... of registered interest.

I (do....), (do not) now claim, with respect  
to the income represented by said interest the  
benefit of a deduction of \$..... allowed  
under Paragraph C, Section II, of the Federal  
Income Tax Law.

Name .....

Address .....

Date ....., 191..

Whenever interest coupons accompanied by a certificate of an individual who is a citizen or resident of the United States, as aforesaid, are presented to a debtor or its fiscal agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its fiscal agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership in the form herein prescribed.

Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, except that it shall be filed with the debtor at least five (5) days before the due date of such interest.

#### BY WHOM SIGNED

These certificates must be signed by the claimants, with their full name, and contain their Post Office and street address, also the date when signed.

Duly authorized agents, trustees acting in a trust capacity, etc., may sign such certificates for the persons for whom they act.

ORGANIZATIONS WHOSE INTEREST COUPONS ARE  
NOT TAXED AT SOURCE

If the owners of the bonds are corporations, joint stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in Paragraph G, Sub-division A, of the Act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.

Such certificates shall be substantially in the following form:

CERTIFICATES TO BE FURNISHED BY ORGANIZA-  
TIONS NOT SUBJECT TO TAX ON INTEREST  
AT SOURCE

I .....

(give name)

the ..... of the .....

(give official position) (name of organization)

a ..... of .....  
 (character of organization) (State)  
 located at .....

(post office address)

do solemnly declare that said .....  
 (give name of organization)

is the owner of \$ ..... bonds of  
 the denomination of \$..... each, Nos.

.....  
 .....  
 ..... of the .....

(give name of debtor)

known as ..... bonds,  
 (describe particular issue of bonds)

from which were detached the accompanying  
 coupons, due ....., 191..., amounting  
 to \$....., or upon which there matured  
 ....., 191..., \$..... of regis-  
 tered interest, and that under the provisions of  
 the income tax law of October 3, 1913, said in-  
 terest is exempt from the payment of taxes  
 collectible at the source, which exemption is  
 hereby claimed.

Name .....  
 (official position)

of .....  
 (name of organization)

Date ..... , 191... Address .....  
 (post office)



This certificate must be signed by the full name of the organization, stating its place of business, and by the President, Secretary or some other principal officer of the said corporation, or organization duly authorized to sign same, together with the date of execution.

HOW COLLECTED WHEN NOT ACCOMPANIED BY  
THE CERTIFICATE OF OWNER

Where coupons or interest orders are not accompanied by the ownership certificates the form to be executed by the first bank, trust company, banking firm, individual or collection agency receiving the same for collection or otherwise which must accompany the coupons or interest orders shall be substantially as follows:

FORM OF CERTIFICATE TO BE PRESENTED WITH  
COUPONS OR INTEREST ORDERS WHEN NOT  
ACCOMPANIED BY CERTIFICATE OF OWNER

I, ....., the.....  
                    (name)                                    (official position)  
of the .....  
                    (bank or collecting agency)  
of.....  
                    (address)  
do solemnly declare that said .....  
                    (bank or collecting agency)

has (or have) purchased or accepted for collection the accompanying coupons or interest orders, amounting to \$....., and which represent interest matured on \$..... of bonds of the .....

(name of debtor)

and that.....received

(bank or collecting agency)

said coupons or orders for registered interest from .....

(name of party from whom received)

of ....., and that no

(address of said party)

certificate of ownership accompanied said coupons or interest orders, and .....

(bank or collecting agency)

hereby acknowledges responsibility of withholding therefrom the normal income tax of 1%, in accordance with the regulations of the Treasury Department.

Name .....

(bank or collecting agency)

By .....

(Signature of officer duly authorized to sign and his official position)

Address .....

(give full address)

Date....., 19...

This certificate shall be dated and signed by and shall state the address of the corporation, organization, collecting agency or person withholding the tax, with full name and address.

#### FINAL DISPOSITION OF CERTIFICATES

The debtor or paying agents shall deliver all certificates with the list of names and addresses of those for whom the tax has been withheld, showing amounts, as required by law, to the *Collector of Internal Revenue* for their district on or before the 20th day of the month succeeding that in which said certificates were received by them.

#### INTEREST DUE BEFORE MARCH 1, 1913.

The tax shall not be withheld on coupons or registered interest maturing and payable before March 1, 1913, although presented for payment at a later date.

#### LICENSE REQUIRED FOR COLLECTION OF INCOME FROM FOREIGN COUNTRIES

All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collec-

tion) the collection of coupons, checks, bills of exchange, etc., for, or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages, or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations or insurance companies engaged in business in foreign countries, are required by law to obtain a license from the Commissioner of Internal Revenue and may be required to give bond in such amount and under such conditions as the Commissioner of Internal Revenue may prescribe.

#### BY WHOM TAX IS WITHHELD

The licensed person, firm, or corporation first receiving any such foreign items, for collection or otherwise, shall withhold therefrom the normal tax of 1 per cent and will be held responsible therefor. He (the licensee) shall thereupon indorse or stamp thereon the words "income tax withheld by " (giving his or their name, address, and date), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., make it impracticable to make said in-

dorsement as above, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.

#### LIST OF TAX COLLECTIONS ON FOREIGN ITEMS

Such licensee shall obtain the names and addresses of the persons from whom such items are received and shall prepare a list of same and file it with the collector of internal revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated and shall contain the names and addresses of the taxable persons and the amount of tax deducted and from what source collected.

#### CERTIFICATES TO SECURE TAX EXEMPTION ON FOREIGN ITEMS

In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the deductions allowable under Paragraph C, Section II, of the Federal income tax law, such individual shall be permitted to avail himself of the deduction claimed, upon sign-



ing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount of the exemption so claimed; or if such items are presented by corporations, joint stock companies, or associations and insurance companies organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted.

In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid to the collector of internal revenue for his district not later than the 20th of the month next succeeding that in which said items were received, and with respect to said coupons, checks or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse, or stamp thereon the words "Income tax exemption claimed through " (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon.

The provisions for collection of the tax on foreign obligations set forth in this section of the regulations includes the interest upon all foreign bonds, even though the coupons may

be at the option of the holder, payable in the United States, as well as in some foreign country.

#### ACCURATE RECORD TO BE KEPT BY LICENSEES

All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal revenue officers.

#### PENALTY FOR OMISSION TO OBTAIN LICENSE

Failure to obtain license or to comply with regulations is punishable by a *fine* not exceeding \$5,000 or *imprisonment* not exceeding *one year*, or *both*, in the discretion of the court. Such licenses shall continue in force until revoked.

Application for such licenses should be made to the collectors of internal revenue for the district in which they are engaged in business and may be issued without cost to such persons as the commissioner may approve, upon their filing with the collector the bond herein provided for.

All persons in making application to the collector of internal revenue for such licenses shall

register their names and addresses and state the nature of the business in which they are engaged. Such application for the license, accompanied by a proper surety bond, when both have been approved by the collector will be considered a sufficient compliance with the law to enable the persons making application to do business until February 1, 1914, without incurring the penalties provided by law for failure to procure the required license.

#### PENALTY FOR FALSE STATEMENTS

*If any person for the purpose of obtaining any allowance or reduction by virtue of a claim for exemption, either for himself or for any other, knowingly makes a false statement or false or fraudulent representation, he is liable under the act to severe penalties.*

#### PARTNERSHIPS

Where coupons or interest orders presented for payment represent the interest on bonds or other similar obligations owned by a partnership, they shall be accompanied by a certificate of ownership, which shall be signed either in the firm's name by one member of the firm or by each individual member of the partner-

ship, and the normal tax shall be withheld by the debtor with respect to the income represented by said interest.

Said certificate of ownership shall be in substantially the following form:

FORM OF CERTIFICATE TO BE FILLED OUT AND  
SIGNED BY MEMBERS OF PARTNERSHIPS

The following certificate should be used when coupons or interest orders are presented by citizens or residents of the United States for collection of interest on bonds or other similar obligations owned by the partnerships of which they are members.

I,....., a member of the  
firm or partnership of.....  
of ..... and residing at .....

(give full address)

do solemnly declare that the said partnership  
is the owner of \$.....bonds of the de-  
nomination of \$..... each, Nos.....

.....  
.....  
.....

of the.....(give name of debtor)  
known as.....bonds, from  
(describe the particular issue of bonds)  
which were detached the accompanying in-

terest coupons due..... 191..,  
 amounting to \$....., or upon which there  
 matured..... 191..  
 \$.....of registered interest, and that the  
 name and address of said firm or partnership  
 and the names of the individual members  
 thereof, and their places of residence, are as  
 follows:

(Names of partners)

(Address)

.....

.....

.....

.....

.....

.....

.....

.....

.....of firm of.....

(Name of partner signing)

.....

(Address).....

Date.....191..

Any member of a partnership who is entitled to a deduction (under Paragraph C, Section II, of the income tax law) of his pro rata share of the tax which may be withheld at the source on interest on bonds owned by his co-partnership, as above, may claim such deduction or allowance when he shall make his individual income tax return for the year in which said deduction at the source was made.



NON-RESIDENT FOREIGNERS OWNING INTEREST  
BEARING BONDS NOT SUBJECT TO TAXATION  
ON INCOME FROM SUCH BONDS IF PROPER  
CERTIFICATE FURNISHED

This tax will not be deducted from the income which may be derived from interest on bonds, mortgages, equipment trusts, receivers' certificates, or other similar obligations of which the *bona fide* owners are citizens of foreign countries residing in foreign countries, *provided* that such interest coupons, or, in case of wholly registered bonds, the orders for the payment of such interest shall be accompanied by duly certified certificates hereinafter provided for to cover the cases of foreign and non-resident owners of bonds and other securities. Unless such proof of foreign ownership is duly furnished, the normal tax of 1 per cent shall be deducted as herein provided.

Such certificate shall be in substantially the following form:

FORM OF CERTIFICATE TO BE PRESENTED WITH  
COUPONS OR INTEREST ORDERS, DETACHED  
FROM BONDS OR OTHER OBLIGATIONS OWNED  
BY THOSE WHO ARE BOTH CITIZENS OR  
SUBJECTS, AND RESIDENTS OF FOREIGN  
COUNTRIES

I do solemnly declare that I am not a citizen  
or resident of the United States of America,  
but a subject (or citizen) of.....  
and that I am the owner of \$.....  
bonds of the denomination of \$..... each,  
Nos. ....  
.....  
of the .....  
.....

(Give name of debtor corporation)  
known as .....bonds  
(Describe the particular issue of bonds)  
from which were detached the accompanying  
coupons, due ....., 191.., amounting to  
\$....., or upon which there matured  
....., 191.., \$.....  
of registered interest, and that being a non-  
resident foreigner, I am exempt from the in-  
come tax imposed on such interest by the  
United States Government under the law  
enacted October 3, 1913, and that no citizen  
of the United States wherever residing or

foreigner residing in the United States, or any of its possessions, has any interest in said bonds, coupons or interest.

.....  
(Signature of owner of bonds. Give full name)

Date ....., 191..

Address .....

(Give full post office address)

#### TEMPORARY PROVISION

In view of the fact that the time required for the interpretation of the law and preparation and issuance of these regulations brings the date so near November 1 and that many coupons payable upon that date are already in transit without the prescribed certificates attached, with a desire to cause as small an amount of inconvenience as possible to bondholders and general business as may be compatible with the provisions of the law and of these regulations, the following temporary provision is made:

On November 1, 1913, and for fifteen days thereafter, coupons presented to a debtor need not be accompanied by certificates in any of the forms hereinbefore described, provided that such coupons are accompanied by a certificate substantially in the following form:

FORM OF TEMPORARY CERTIFICATES, WHICH MAY  
BE USED ONLY PRIOR TO NOVEMBER 16,  
1913, SUBJECT TO SUBSTITUTION

I (we) hereby certify that I am (we are)  
lawfully entitled to present for payment the  
accompanying coupons or interest orders  
amounting to \$..... (giving amount),  
representing interest matured on the follow-  
ing bonds.....  
(giving name of debtor and designating the  
description, style, and numbers of the bonds);  
that said coupons or interest orders came into  
my (our) possession unaccompanied by a cer-  
tificate of ownership of said bonds, in any of  
the forms required by the regulations of the  
United States Treasury Department, and that  
the name and address of the owner of such  
bonds are as follows: (give name and address  
.....  
.....  
of owner; if impossible to do this, so state.)  
Name of person, firm, or corporation present-  
ing coupons .....  
Address .....

On or before February 1, 1914, certificates  
of the ownership of any of the bonds upon  
which was collected the interest referred to in

such temporary certificates, in any of the forms above set forth, may be delivered to the debtor, and said debtor may thereupon return any sum withheld to which the owner of such bonds may be entitled under the law and regulations upon the facts disclosed by such ownership certificates. Any temporary certificates relating to bonds, for which certificates of ownership shall not have been substituted with the debtor shall, on or before March 1, 1914, be delivered to the collector of internal revenue.

All forms of certificates herein provided for shall be 8 inches wide and  $3\frac{1}{2}$  inches from top to bottom, and printed on paper corresponding in weight and texture to glazed bond paper 17 by 28, about 26 pounds to the ream of 500 sheets, or white writing paper 21 by 32, about 32 pounds to the ream of 500 sheets, and the person or corporation first receiving coupons or interest orders for collection shall write or stamp his or its name and address and date on the back of said certificates.

W. H. OSBORN,  
Commissioner of Internal Revenue.

Approved October 25, 1913.

W. G. McADOO,  
Secretary of the Treasury.



FURTHER REGULATIONS AS TO COLLECTION  
AT THE SOURCE  
REGULATIONS

REGARDING THE DEDUCTION AT THE SOURCE OF  
THE NORMAL TAX OF 1 PER CENT. FROM  
INCOME OF INDIVIDUALS OTHER THAN IN-  
COME DERIVED FROM INTEREST UPON BONDS  
AND MORTGAGES, OR DEEDS OF TRUST OR  
OTHER SIMILAR OBLIGATIONS OF CORPORA-  
TIONS, JOINT STOCK COMPANIES OR ASSOCIA-  
TIONS, AND INSURANCE COMPANIES UNDER  
THE PROVISIONS OF SECTION 2 OF THE ACT  
OF OCTOBER 3, 1913

“The source,” in these regulations, shall be  
construed as referring to the place where the  
income originates.

BY WHOM THE NORMAL TAX SHALL BE DEDUCTED  
AND WITHHELD

All persons, firms, &c., mentioned in Para-  
graph E of this law hereinafter referred to as  
“Withholding Agents,” namely:

“Copartnerships, companies, corporations,  
joint stock companies or associations, insurance  
companies, in whatever capacity acting, in-

cluding lessees, mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers and all officers and employees of the United States having the control, receipt, custody, disposal or payment of interest (except income derived from interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, upon which the normal tax of 1 per cent. has been otherwise withheld at the source, as provided by these regulations), rent, salaries, wages, royalties, taxable annuities, emoluments or other fixed or determinable gains, profits and income of another person exceeding \$3,000 for any taxable year, except as hereinafter provided."

Shall deduct and withhold from such annual gains, profits and income such sum as will be sufficient to pay the normal tax of 1 per cent. imposed thereon by section 2 of this act, and shall make the lawful return and pay the taxes so withheld to the collector of internal revenue for the district in which said withholding agent resides or has his, her or its principal place of business.

The normal tax of 1 per cent. shall be thus withheld from all income derived from fixed annual periodical rent of realty or personalty, interest (except as herein otherwise provided),

salaries, royalties, taxable annuities and other fixed annual periodical income exceeding \$3,000.

ITEMS UPON WHICH TAX IS NOT TO BE WITH-  
HELD AT THE SOURCE

1. Dividends on capital stock, or from the net earnings of corporations and joint stock companies or associations and insurance companies, subject to like tax, when said withholding agents are required to make and render a return in behalf of another, as provided herein, to the collector of his, her or its district.

2. Proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured on life insurance, endowment or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon the surrender of contract — all of which shall not be included as income under this law — but this shall not be construed to exempt said insurance companies from withholding and paying the normal tax of 1 per cent. on interest paid by insurance companies to beneficiaries of policies when said interest exceeds \$3,000.

3. Income of an individual which is not fixed or certain and payable at stated periods, or is

indefinite or irregular as to amount or time of accrual, shall not be withheld at the source, but shall be returned and the tax shall be paid thereon by the individual.

Income derived from the following professions and vocations come under this head:

Farmers, merchants, agents compensated on the commission basis, lawyers, doctors, authors, inventors and other professional persons.

Such persons shall make personal return of all their income, provided their total income from all sources exceeds \$3,000.

For example: When a lawyer receives a retainer of \$5,000 as a special fee, a deduction therefrom shall not be made by the payer, but when a lawyer receives a retainer of \$5,000 per annum and the exemption claimed is \$3,000, \$2,000 of such income would be taxed and the tax retained at the source, or if his exemption claimed should be \$4,000, \$1,000 of such income would be taxed and the tax withheld at the source.

4. The value of property acquired by gift, bequest, devise or descent.

5. Interest upon the obligation of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term

for which he has been elected, and of the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof paid by a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

This exempts from the income tax all salaries paid to an individual by a State or any political subdivision thereof; this would include salaries of State, county and municipal officers, including the salaries of public school teachers and special compensation paid by States or subdivisions thereof for professional services, whether in the shape of salaries or special fees.

#### NORMAL TAX ON THE SAME INCOME TO BE WITHHELD BUT ONCE

The normal tax of 1 per cent. shall be deducted and withheld at the source and payment made to the collector of internal revenue, as provided in the law, by the debtor or his, her or its duly appointed agent authorized to make such deduction and payment.

No other person, firm or organization in whatever capacity acting, having the receipt, custody or disposal of any income as herein



provided, shall be required to again deduct and withhold the normal tax of 1 per cent. thereon, provided that any person, firm or organization, in whatever capacity acting, other than the debtor who has withheld said tax, shall file with the collector of internal revenue for his, her or its district, a certificate in substantially the following form:

FORM OF CERTIFICATE TO BE FILED BY PERSONS, FIRMS OR ORGANIZATIONS, REQUIRED TO WITHHOLD AND PAY SAID TAX, OTHER THAN THE DEBTOR AT THE SOURCE

To.....  
(name of collector of internal revenue)

.....  
(give address and district)

I .....  
(name) (official title if any)

of the .....  
(person, firm or organization)

.....  
(capacity in which acting)

of.....do solemnly declare  
(post office address)

that I (we) received of.....,  
(name of person withholding)

same being income derived from.....



withholding agent not less than thirty days prior to the day on which the return on his income is due, a notice in the following form:

FORM FOR CLAIMING EXEMPTION AT THE SOURCE  
AS PROVIDED IN PARAGRAPH C, SECTION 2,  
OF THE LAW OF OCTOBER 3, 1913

To.....  
(give name of withholding agent)

.....  
(post office address)

I hereby serve you with notice that I am single (married) and living with my wife (husband) (strike out to show status correctly) and now claim the benefit of the exemption of \$.... as allowed in paragraph C and D of section 2 of the Federal income tax law of October 3, 1913. (My total exemption under said paragraphs being \$.....)

(Signed).....

(Address).....  
(street and number)

.....  
(City and State)

Date....., 191..

BY WHOM EXEMPTIONS UNDER PARAGRAPH C,  
SECTION 2, OF THIS ACT MAY BE CLAIMED

Every single person, or every married person not living with wife or husband, who is liable for the normal income tax under this law may claim a total deduction of \$3,000 from net income, on which deduction he or she is exempt from normal tax of 1 per cent.

Where a husband and a wife live together and only one of them has an annual income liable for the normal tax of 1 per cent., then the husband or wife who has the income shall make the return and pay the said tax and may claim and deduct an exemption of \$4,000.

But if a husband and wife live together and each has an annual income liable for the normal tax of 1 per cent., then in that event they shall make a separate return and the \$4,000 exemption allowed to a husband and a wife when living together may be claimed and deducted by either the husband or wife as they may mutually agree (but not by both separately or the said exemption shall be prorated between them in proportion to their net income).

AMOUNT OF EXEMPTION ALLOWABLE FOR 1913  
UNDER PARAGRAPH C, SECTION 2, OF THE  
FEDERAL INCOME TAX LAW

For the present year of 1913 (from March 1 to December 31) exemptions allowed under paragraph C of this law will be five-sixths of those of the calendar year, as specified in paragraph D, namely, \$2,500 if the exemption is \$3,000, or \$3,333.33 if the exemption is \$4,000, as the case may be.

WHEN AND ON WHAT AMOUNT THE NORMAL TAX  
OF 1 PER CENT. SHALL BE WITHHELD

A withholding agent who pays monthly or periodically during the year interest (except income derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, &c., upon which the normal tax of 1 per cent. has been withheld at the source, as provided by these regulations), rents, salaries, wages, &c., shall not withhold the said tax until such time as the rents, salary, wages, &c., shall have reached an aggregate amount in excess of \$3,000 for said period. When such amount has been reached, he, she or it shall withhold the tax on the whole \$3,000 and excess thereof, unless the person to whom the income is due files with him, her or it the



notice herein provided, claiming exemption under paragraph C of section 2 of this act, in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of \$3,000 or \$4,000 (as the case may be) and the tax so withheld shall be returned and paid as required by law.

#### DEDUCTIONS TO BE MADE IN COMPUTING NET INCOME

Any person subject to the normal income tax of 1 per cent. a part of whose income is withheld or is to be withheld at the source, who may wish to avail himself of the deductions authorized in subsection B, section 2, of this act, may file either with the collector of internal revenue for the district in which return is made for him, or with the withholding agent, not less than thirty days prior to March 1, a return and notice in substantially the following form:

#### RETURN AND APPLICATION FOR DEDUCTIONS

To.....  
(name of withholding agent)

.....  
(street and number) (town or city)  
.....  
(State)

I hereby solemnly declare that the following is a true and correct return of my gains, profits and income from all other sources for the calendar year ended December 31, 191.. (from March 1 to December 31 for the year 1913) and a true, correct return of deductions asked for under paragraph B of section 2 of the act of October 3, 1913, and I hereby claim deductions as shown below.

Amount of gains, profits, interest, rents, royalties, profits from copartnerships and income from all other sources whatsoever.

#### DEDUCTIONS

1. The amount of necessary expenses actually paid in carrying on business, not including personal living or family expenses. . . . .

2. All interest paid within the year on personal indebtedness of tax payer. . . . .

3. All national, state, county, school and municipal taxes paid within the year (not including those assessed against local benefits). . . . .

4. Losses actually sustained during the year, incurred in trade or arising from fires, storms or shipwreck and not compensated for by insurance or otherwise. . . . .

5. Debts due, actually ascertained to be worthless and charged off within the year.....

6. Amount representing a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not in excess in the case of mines 5 per cent. of the gross value of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.....

7. The amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association or insurance company which is taxable upon its net income.....

8. The amount of income, the tax upon which has been paid or withheld for payment at the source of income.....

\_\_\_\_\_  
\_\_\_\_\_  
Total deductions.....

(Signed).....

(Address).....

Note: Money or other things of value disposed of by gift, donation or endowment shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income tax law.

AMOUNT OF DEDUCTION ALLOWABLE FOR 1913  
ACCORDING TO PARAGRAPHS B AND D OF  
SECTION 2 OF THIS ACT

For the present year of 1913 (from March 1 to December 31) the deductions allowed under paragraph B shall be five-sixths of the deductions allowable for a calendar year as specified in paragraph D of this law.

AMOUNT OF TAX TO BE WITHHELD FOR 1913  
AND WHEN WITHHELD

The withholding agent is not required to deduct and withhold prior to November 1, 1913, the normal tax of 1 per cent. for which an individual is liable.

Whenever the total amount of income paid to any person by a withholding agent after October 31, 1913, shall be in excess of \$3,000, then in that event the withholding agent shall be liable for and shall deduct and withhold the tax on such amounts unless such person shall

file a claim for an exemption as allowed in paragraph D of this act, the amount of exemption allowable being \$2,500 if the annual exemption is \$3,000 or \$3,333.33 if the annual exemption is \$4,000, as the case may be.

#### PERSONS PHYSICALLY UNABLE TO MAKE RETURNS

If a person subject to said tax, part of whose income is withheld or is to be withheld, is a minor or insane person, or is absent from the United States, or unable to make the application or return because of serious illness the application or return may be made by the withholding agent, who shall make the following oath, under the penalties of this act:

#### FORM OF OATH REQUIRED OF A WITHHOLDING AGENT WHEN ACTING FOR ANOTHER IN FIL- ING RETURN AND MAKING APPLICATION FOR DEDUCTIONS ALLOWABLE UNDER PARA- GRAPH B AS PROVIDED IN PARAGRAPH E, SECTION 2, OF THE FEDERAL INCOME TAX LAW OF OCTOBER 3, 1913

I hereby swear (or affirm) that I have sufficient knowledge of affairs and property of (naming person and address for whom acting) to enable me to make full and complete return for



(naming persons), and that the return of income and application for deductions made by me are true and accurate.

(Signed) .....  
Address (street and number) .....  
City and State .....  
Date ....., 191..  
Signed and sworn to before ....., 191..

## PENALTIES

Subsection F of section 2 of the income tax law provides, inter alia, as follows:

Any person or any officer of any corporation required by law to make, render, sign or verify and return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made, shall be guilty of a misdemeanor and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution.

W. H. OSBORN,  
*Commissioner of Internal Revenue.*

Approved, October 31, 1913.

W. G. McADOO,  
*Secretary of the Treasury.*



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